

Kevin E. Gilbert, Esq. (SBN: 209236)
kgilbert@ohhlegal.com
Nicholas D. Fine, Esq. (SBN: 285017)
nfine@ohhlegal.com
ORBACH HUFF + HENDERSON LLP
6200 Stoneridge Mall Road, Suite 225
Pleasanton, CA 94588
Telephone: (510) 999-7908
Facsimile: (510) 999-7918

Attorneys for Defendants
COUNTY OF ALAMEDA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LISAMARIA MARTINEZ,

Plaintiff,

v.

COUNTY OF ALAMEDA,

Defendant.

Case No. 20-cv-06570-TSH

**DECLARATION OF NICHOLAS D. FINE
IN SUPPORT OF DEFENDANT COUNTY
OF ALAMEDA'S OPPOSITION TO
PLAINTIFF'S MOTION FOR PERMANENT
INJUNCTION**

DATE: July 11, 2024
TIME: 10:00 a.m.
DEPT: Courtroom E
JUDGE: Hon. Thomas S. Hixson

I, Nicholas D. Fine, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts in the State of California and the United States District Court – Northern District of California. I am an attorney with Orbach Huff + Henderson LLP and one of the attorneys of record for Defendant COUNTY OF ALAMEDA (“County”). If called and sworn as a witness to testify, I am competent to testify and would testify from my own personal knowledge as to the facts set forth in this Declaration, except as to those matters that are stated on information and belief herein.

2. This Declaration is submitted for the purpose of presenting evidence in support of the County’s Opposition to Plaintiff LISAMARIA MARTINEZ’s (“Plaintiff”) Motion for Permanent Injunction (“Motion”).

3. Attached hereto as **Exhibit A** is a true and correct copy of relevant portions of the Transcript of Jury Trial Proceedings for the trial of this action, Volume 2, pages 195-361, dated March 27, 2024.

4. Attached hereto as **Exhibit B** is a true and correct copy of relevant portions of the Transcript of Jury Trial Proceedings for the trial of this action, Volume 3, pages 362-557, dated March 28, 2024.

5. Attached hereto as **Exhibit C** is a true and correct copy of relevant portions of the Transcript of Jury Trial Proceedings for the trial of this action, Volume 4, pages 558-709, dated March 29, 2024.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 6th day June, 2024, at Pleasanton, California.



Nicholas D. Fine

EXHIBIT A

Volume 2

Pages 195 - 361

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Thomas S. Hixson, Magistrate Judge

LISAMARIA MARTINEZ,)	
)	
Plaintiff,)	
)	
VS.)	NO. 3:20-CV-06570 TSH
)	
COUNTY OF ALAMEDA,)	
)	
Defendant.)	
_____)	

San Francisco, California
Wednesday, March 27, 2024

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Plaintiff:

TRE LEGAL PRACTICE
1155 Market Street, Tenth Floor
San Francisco, California 94103
BY: TIMOTHY R. ELDER, ATTORNEY AT LAW

UNDAUNTED LAW FIRM, P.C.
600 California Street, Seventh Floor
San Francisco, California 94108
BY: S. TOMIYO STONER, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG
CSR No. 7445, Official United States Reporter

APPEARANCES: (CONTINUED)

For Defendant:

ORBACH HUFF & HENDERSON LLP
6200 Stoneridge Mall Road, Suite 225
Pleasanton, California 94588

BY: KEVIN E. GILBERT, ATTORNEY AT LAW
NICHOLAS D. FINE, ATTORNEY AT LAW

Also Present:

Lisamaria Martinez
Michelle Korosy, Paralegal
Matthew Yankee, County of Alameda

1 testimony as the truth about what the law is. I will instruct
2 you in the jury instructions about what the Americans with
3 Disabilities Act requires. But she is allowed to testify as to
4 her personal understanding of what may have been required, and
5 that's all that you're to take this testimony as.

6 **THE WITNESS:** Your question?

7 **BY MS. STONER:**

8 **Q.** On March 29, 2019, were you aware that the Americans with
9 Disabilities Act sometimes requires the CRO to provide
10 assistance to customers who are blind?

11 **A.** If that is --

12 **MR. GILBERT:** Misstates the law.

13 **THE COURT:** Overruled.

14 **THE WITNESS:** If that is the case, then it contradicts
15 the state law and our policy. We would not complete a form
16 that is already signed under penalty of perjury, especially
17 particularly because the client could not verify visually what
18 we are changing.

19 **BY MS. STONER:**

20 **Q.** Okay. Let's back up.

21 On March 29, 2019, was it your understanding the CRO had
22 any obligation to provide any additional service to a customer
23 who is blind because of --

24 **A.** My understanding --

25 **MR. GILBERT:** Overbroad. Incomplete hypothetical.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** My understanding about the ADA is that
3 we accommodate to the best of our ability, and that includes
4 possibly walking someone to the counter that is blind,
5 communicating by writing if a person is deaf --

6 **BY MS. STONER:**

7 **Q.** So as --

8 **A.** -- but not to fill out, not to alter any documents.

9 **Q.** Okay. So as of March 29, 2019, you did understand that as
10 a County employee, you had certain obligations under the ADA to
11 provide services to customers who were blind that you would not
12 necessarily provide to customers who were not blind, such as
13 walking to the counter or passing notes --

14 **A.** If a person is --

15 **Q.** -- to someone who is deaf?

16 **A.** -- able-bodied, they can walk to the counter on their own
17 strength, yes.

18 And if a person is deaf, there would be no reason -- not
19 deaf, or they can hear, there would be no reason to exchange
20 anything in writing.

21 **Q.** Right. And you understood on March 29, 2019, that you
22 would sometimes be obligated by the Americans with Disabilities
23 Act to provide some additional support?

24 **A.** Provide any accommodations --

25 **MR. GILBERT:** Misstates the law.

1 **THE COURT:** Overruled.

2 **THE WITNESS:** Provide any accommodations that are
3 possible without breaking the law.

4 **BY MS. STONER:**

5 **Q.** Sure.

6 Okay. I'm going to grab this binder real quick.

7 Do you remember having your deposition taken in this
8 matter?

9 **A.** Yes.

10 **Q.** And did you testify accurately during your deposition?

11 **A.** To the best of my knowledge.

12 **Q.** Truthfully?

13 **A.** Mm-hmm, yes.

14 **MS. STONER:** Okay. I'd like to introduce the
15 recording of the encounter between you and Ms. Martinez.

16 Your Honor, I'd like to move to mark the file Exhibit 1A,
17 the digital recording.

18 **THE COURT:** 4A, do you mean?

19 **MS. STONER:** 4A. I'm sorry. 4A.

20 (Trial Exhibit 4A marked for identification)

21 **THE COURT:** Are you moving to admit it?

22 **MS. STONER:** Yes.

23 **THE COURT:** Is there any objection from the defense?

24 **MR. GILBERT:** I think it needs a foundation first;
25 but, no, there's no objections to 4A.

MORAN - DIRECT / STONER

1 **MR. GILBERT:** No, Your Honor. Thank you.

2 **THE COURT:** Exhibit 4A is admitted.

3 (Trial Exhibit 4A received in evidence.)

4 **MS. STONER:** Okay. I'd like to play Exhibit 4A for
5 the jury.

6 (Audio was played but not reported.)

7 **BY MS. STONER:**

8 **Q.** All right. So as that recording played, do you -- did you
9 hear yourself stating that "By filling it out, I'm breaking the
10 law"?

11 **A.** Yes.

12 **Q.** And when you said that -- when you said that, do you
13 believe that you were telling Ms. Martinez the truth?

14 **A.** Yes.

15 **Q.** And as you testify today, do you believe it would be
16 breaking the law to assist a blind customer by acting as a
17 transcriber on an FBNS form?

18 **A.** As a -- as a signed application, a signed form. She had
19 signed already that particular application under penalty of
20 perjury. Yes, I cannot change or alter a document that's
21 already been signed.

22 **Q.** Okay. So you understand that you can't change or alter a
23 document that's already been signed, but what about a blank
24 FBNS form?

25 **A.** That did not come into play.

1 disabilities?

2 A. Of course, mm-hmm.

3 Q. But also, it's your obligation to follow the policies of
4 the County?

5 A. Yes. And it's common courtesy.

6 Q. And the County never gave you a written policy that told
7 you what auxiliary aids you're able to offer prior to March 29,
8 2019?

9 A. Not in paper form, but it is to the best of our ability.
10 We do everything possible that is -- that is within our power
11 to serve those with disabilities.

12 Q. But had anyone from the County ever trained you or told
13 you, prior to March 29, 2019, that one of the ways you can
14 assist someone who is blind is by helping them complete a blank
15 form?

16 A. Not a blank form, no. And that did not come up that day.

17 Q. Okay. So if this -- so on the date that Ms. Martinez
18 approached you, were you aware of all the requirements of the
19 ADA? Did you feel very well-trained in that regard?

20 MR. GILBERT: Overbroad. Vague.

21 THE COURT: Overruled.

22 THE WITNESS: Yes, I -- I -- we do our best to
23 accommodate those with disabilities --

24 BY MS. STONER:

25 Q. Okay.

MORAN - DIRECT / STONER

1 **A.** -- short to writing pen on paper on a signed form.

2 **Q.** Okay. And when you say you do your best, though, that's
3 based on your understanding of the policies and not based on an
4 in-depth review of the ADA?

5 **A.** Yes.

6 **Q.** If this incident with Ms. Martinez were to occur today,
7 would you do anything differently?

8 **MR. GILBERT:** Speculation.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** We have now a kiosk on-site that is able
11 to read voice-activated information that will fill out a form.
12 So it's not an issue anymore.

13 **BY MS. STONER:**

14 **Q.** So as of today, there is a kiosk that has a screen reader
15 installed?

16 **A.** Yes.

17 **Q.** And when did that kiosk go into place?

18 **A.** I believe it was July of last year.

19 **Q.** And do you remember receiving an e-mail from Jocelyn Cole
20 in around that time frame that indicated the instructions for
21 using the kiosk?

22 **A.** Yes.

23 **Q.** And at that time, did Ms. Cole reiterate to you it was
24 still the policy of the CRO that clerks were not to write on
25 documents?

MORAN - DIRECT / STONER

1 Q. Gotcha. All right.

2 MS. STONER: One moment, please. Let me just...

3 (Pause in proceedings.)

4 BY MS. STONER:

5 Q. All right. So as of today's date, if a blind user had
6 difficulty with the kiosk system and asked you to help them by
7 transcribing on a blank FBNS form, would you have the ability
8 to do that?

9 MR. GILBERT: Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: That -- to my understanding, that would
12 be the purpose of the kiosk, is to fill out the form
13 completely. So my filling out another blank form would not be
14 necessary.

15 BY MS. STONER:

16 Q. I'm not asking if it's necessary. I'm asking, if it
17 became necessary, would you have the ability to?

18 A. I would have to consult with my management whether or not
19 I would be able to. But I would be physically able to. I know
20 how to complete forms. But whether or not we would be allowed
21 to would be a question with my management. But I don't see why
22 it wouldn't.

23 Q. Okay. So, but as you sit here today, you've never
24 received clear instruction from management that if an
25 individual is unable to use the kiosk -- for example, if an

1 policy is similarly based on federal law?

2 A. I -- I don't.

3 Q. Is it your understanding that the County policies --
4 excuse me. I'm sorry.

5 Is it your understanding that the County policies
6 literally echo and repeat the state and federal law on these
7 issues?

8 A. I would understand so.

9 Q. Thank you.

10 Now, let's go into a few more basics. When did you first
11 start working at the County Recorder's Office?

12 A. I started my first day on August 29th, 2005.

13 Q. And, actually, that was a poor question by me.

14 When did you start working for the County of Alameda? Was
15 that the same date?

16 A. Same date, yes.

17 Q. Have you worked continuously in the Clerk-Recorder's
18 Office that whole time?

19 A. No.

20 Q. Can you tell us very briefly your work history with the
21 County?

22 A. When I started, it's been mentioned that our original
23 title was clerk recorder specialist, so we would rotate within
24 our four to five departments in our office.

25 But by the time I came -- and we would rotate three --

1 around three departments. So when I would rotate around, by
2 the time it was my turn for the third rotation, we combined
3 with across the street.

4 So I went -- I worked in vitals general business, which is
5 the current department, and then I transferred to the indexing
6 where I cross-trained for eight months. It should have been
7 six, but I stayed on due to staffing.

8 And then when my turn came around in 2009, I went across
9 the street to central payroll for nine months due to staffing,
10 and then maternity leave.

11 Q. Have your job duties generally remained somewhat
12 consistent during the entirety of your employment with the
13 County?

14 A. Yes.

15 Q. And can you generally tell the jury what those job duties
16 encompass?

17 A. In our vitals general business unit, we have three mini
18 departments. They're separate. We have the section that
19 issues birth, death, and marriage certificates that are already
20 filed. Just copying them on paper and take the fee.

21 Then we have the marriage license department. We issue
22 marriage licenses, perform ceremonies, and then record the
23 document on-site right there within five minutes of the
24 ceremony.

25 Then we have the general business unit, which is the

1 fictitious business name. We do process servers, legal
2 document assistance, notary bonds, and that we forward on to
3 the state.

4 Q. Thank you, ma'am.

5 Now, in those various roles, you mentioned you had,
6 I think, three rotations. Was that the word you used?

7 A. Yes.

8 Q. Are you -- do you receive -- is that considered a training
9 rotation?

10 A. It is. And each time, we move up. It was Auditor
11 Associate I, which you're hired at; and after each rotation, we
12 move up to II and then finally to III.

13 Q. And during that process, are you also trained on the
14 Americans with Disabilities Act?

15 A. Mostly in the vitals general business unit because it is
16 face-to-face customer contact.

17 Q. And do you receive training about how to interact and how
18 to help individuals with disabilities?

19 A. It was mostly on-the-job training from the time I started;
20 and then over the course of my tenure, we watch videos, and any
21 e-mails come through that update any policies, and then just
22 general interaction with the customers.

23 Q. So let me see if I understand this right. Is it fair to
24 say that you received training during your initial rotations on
25 how to interact with customers and compliance with the ADA?

1 A. Yes.

2 Q. And then you would receive additional training in each of
3 the subsequent assignments that would also encompass aspects of
4 the ADA?

5 A. Not in our assignments as when we're not working in
6 customer contact. Indexing is upstairs, and it's not customer
7 contact at all.

8 Q. So you may not receive as much updates on the ADA, for
9 example, if you're back in a back office, not interacting with
10 the community?

11 A. Yes.

12 Q. But once you go back to a position that you're interacting
13 with the community and the patrons, would you again receive
14 regular updates on compliance with the various state and
15 federal laws, including the ADA?

16 A. Yes.

17 Q. Now, would that be something that you would receive
18 continually as a regular part of your job?

19 A. Yes. We do -- over occasion, the County will send out
20 training videos and say, "You're required to watch this by
21 such-and-such date," and those do have ADA concepts in them.

22 Q. Now, you used the word, I think, "effective communication"
23 earlier. What is it that you understand effective
24 communication to be?

25 A. That we are understanding, speaking the same language.

1 Q. Do you need to have some type of written document or case
2 law, or something like that, for you to be able to understand
3 what effective communication is?

4 A. No.

5 Q. Well, how is it that you're going to know how to interact
6 with a person without having something in writing that's handed
7 to you?

8 A. It is just day-to-day training.

9 Q. And generally, can you tell me what the training is as far
10 as how you should treat the patrons that come into the County?

11 A. We -- most of my co-workers and I come from a banking
12 background, so we know how to greet people, smile, treat
13 customers cordially; and into that is also treating customers
14 with disabilities to the best of our ability without breaking
15 the law.

16 Q. Now, what are you trained to do if you have a customer or
17 a patron that comes into the counter that has disabilities and
18 is having trouble communicating?

19 A. It depends. If -- if a customer is blind, then in this
20 case, we would do our best. And what we do, actually, is if --
21 we will not complete any applications for them or change any
22 documents, but we try to find alternatives.

23 The alternative, the first thing we ask, "Did you bring
24 someone with you that you trust and that is able to complete
25 this form to -- so it can be submitted?"

BRIONES - DIRECT / STONER

1 that's signed -- previously signed under penalty of perjury or
2 that it's a legal -- a document that's, like, a legal nature, a
3 legal document.

4 Q. So it sounds like the County had given you a lot of
5 training about its policies about not modifying documents; is
6 that correct?

7 A. Yes.

8 Q. And you'd been trained on that a number of times over the
9 years?

10 A. Yes.

11 Q. And the County hadn't specifically instructed you about
12 when the ADA did and didn't require you to assist in completing
13 a form. It was just your own understanding of being helpful to
14 customers; is that correct?

15 A. Well, we try to be as helpful as possible within our
16 capacity when it doesn't go into us doing something illegal or
17 modifying or altering a document that is potentially going to
18 be recorded or filed in our office.

19 Q. And on that day, did you ask your supervisor for further
20 clarification on what you were required to do in that
21 situation?

22 A. I did confirm with my supervisor -- specifically to
23 Ms. Martinez?

24 Q. Yes, specifically to Ms. Martinez.

25 A. I did.

BRIONES - DIRECT / STONER

1 Q. And your supervisor likewise communicated to you that you
2 were following the policy of the County?

3 A. Yes.

4 Q. As we sit here today, if this incident were to occur,
5 would you do anything differently?

6 A. If it was today?

7 Q. Yes.

8 A. Well, we have a software on one of our public kiosks that
9 allows an individual to be able to type -- see what's being
10 typed. So if someone came in, we would direct them to that
11 public kiosk.

12 Q. And if they used the kiosk, are they able to communicate a
13 change to a written form?

14 A. Well, the --

15 MR. GILBERT: Vague.

16 THE COURT: Overruled.

17 THE WITNESS: The kiosk just allows them to enter the
18 information so that it could be submitted and -- the
19 information could be submitted to us for review.

20 BY MS. STONER:

21 Q. In the --

22 A. So we wouldn't know if -- you know, the customer wouldn't
23 know if it needed correction because we wouldn't -- we're not
24 reviewing that document yet.

25 Q. Okay. Did Ms. Martinez explain to you that she could

1 verify information if you read it aloud back to her?

2 A. I don't recall.

3 Q. Okay. We'll listen to another recording in a minute.

4 On that date -- or in today's world, now that you have the
5 kiosk, is an individual who is blind, or otherwise unable to
6 access print, able to communicate the information they need via
7 the form to the County?

8 A. They're able to enter the information such that the form
9 can be submitted to our office, and then we could print it for
10 them.

11 Q. So assuming the system works with the kiosk and the new
12 screen reader software, a person with a disability is able to
13 communicate both verbally and via the form today?

14 A. Yes.

15 Q. And so you understand that when they communicate via the
16 form, that is written communication to the County from the
17 individual with the disability?

18 A. By them completing the form, yes.

19 Q. So you understand that for Ms. Martinez to have
20 communicated her information to the County, she needed
21 something other than a printed form that she had to write on in
22 order to make that change so she could communicate the
23 information to the County on March 29, 2019?

24 MR. GILBERT: Calls for lay opinion. Legal
25 conclusion.

BRIONES - DIRECT / STONER

1 **THE COURT:** Overruled.

2 **THE WITNESS:** I don't think I understand. Can you
3 repeat the question?

4 **BY MS. STONER:**

5 **Q.** Yes.

6 So Ms. Martinez had information on March 29, 2019, that
7 she wanted to communicate to the County, namely, the change
8 that the County said she needed in order for her document to be
9 filed, but she was unable to do so because the print form was a
10 barrier to effective communication in printed form?

11 **A.** The form was already completed, so we were unable to make
12 the changes for her.

13 **Q.** Okay. But what I am asking is: You have previously
14 testified that today a blind user can theoretically use a kiosk
15 which will enable them to change the form at the CRO and will
16 enable them to communicate printed information back to the CRO;
17 is that correct?

18 **A.** Yes.

19 **Q.** And Ms. Martinez was trying to do the same thing, to
20 communicate written information back to the CRO; correct?

21 **MR. GILBERT:** Speculation.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** She was asking us to modify and correct
24 her form.

25 \\

1 **BY MS. STONER:**

2 **Q.** You've told me the reason that she was asking -- you told
3 me one thing she was asking for, but the purpose of
4 Ms. Martinez wanting to change the form was that so she could
5 communicate written information back to the County about her
6 business?

7 **MR. GILBERT:** Speculation. Asked and answered.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** She -- she had filled out the form that
10 needed to be submitted --

11 **BY MS. STONER:** --

12 **Q.** Okay.

13 **A.** -- for her filing.

14 So that document, she had already filled it out.

15 **Q.** Okay.

16 **A.** So she --

17 **Q.** So --

18 **A.** I understand -- okay. Go ahead.

19 **Q.** Could you take -- so the issue that she had, the barrier
20 to communication, was that the form was not in an accessible
21 format to Ms. Martinez on that day; correct?

22 **MR. GILBERT:** Calls for a legal conclusion. Lay
23 opinion.

24 **THE COURT:** Overruled.

25 **THE WITNESS:** The form is available to any customer.

1 You know, we have it on our website. We have it in person.

2 **BY MS. STONER:**

3 **Q.** A blank printed form would have been available to any
4 sighted customer; is that correct?

5 **A.** If they ask us for a blank form, we would provide it --

6 **Q.** But the --

7 **A.** -- to anyone.

8 **Q.** -- blank printed form was not in a format that

9 Ms. Martinez could use on March 29, 2019, was it?

10 **A.** It's available to her if she had asked for one.

11 **Q.** So you're saying that on March 29, 2019, you would have
12 given her a blank paper form if she had asked?

13 **A.** If she had asked for a blank one, I would have given her
14 one.

15 **Q.** And it's your testimony that she could have written on
16 that form and submitted her information back to the County via
17 a printed form?

18 **A.** She -- she could have filled it -- she could have asked
19 someone to fill it out, or she could have taken it home.

20 **Q.** She did ask someone to fill it out. She asked you to fill
21 it out.

22 **THE COURT:** Don't interrupt the witness.

23 Sorry, that was directed to counsel, not to the court
24 reporter.

25 **MS. STONER:** Sorry.

BRIONES - CROSS / GILBERT

1 Q. Can you very briefly tell the County -- or tell the jury
2 about the different positions you've held at the County over
3 that period?

4 A. Sure. I've been a supervisor at the Clerk-Recorder's
5 Office. I've been a customer service supervisor, recording
6 unit supervisor; and then currently I'm the vitals general
7 business supervisor.

8 Q. So you're a little soft-spoken. Can I talk you into
9 pulling the microphone --

10 A. Oh, sure.

11 Q. -- just a little bit closer to your mouth?

12 A. Sorry.

13 Q. That's okay.

14 A. Is that better?

15 Q. Much better. Thank you.

16 A. Okay.

17 Q. So what is your current position?

18 A. I'm a Clerk Recorder and Collections Supervisor II.

19 Q. And how long have you been in that role?

20 A. Approximately 18 years.

21 Q. Now, through the course of your roughly a quarter century
22 with the County, that's a fair amount of time --

23 A. Mm-hmm.

24 Q. -- have you received training on how to do your job?

25 A. Yes.

1 Q. And do you receive training on the Americans with
2 Disabilities Act?

3 A. We do.

4 Q. And when would you first have received that training?

5 A. When I first was hired with the County, and then we have
6 ongoing training.

7 Q. And generally, just in concept, what can you tell us about
8 the training you receive about interacting with disabled
9 individuals?

10 A. We're trained to assist persons with disabilities to the
11 best of our ability, depending on the situation and the
12 request, as long as it's something within our scope and
13 something that we can provide to the customer and it's not
14 something improper or illegal.

15 Q. Now, are you taught whether or not providing -- or
16 conducting an illegal act would be considered a reasonable
17 accommodation if a disabled individual requested it?

18 A. Can you repeat the question?

19 Q. What are you taught in regards to if a disabled individual
20 comes in and demands that you do something that's illegal, that
21 you break the law? What are you taught in that regard?

22 A. Not to do it.

23 Q. And is that based upon the County's policy?

24 A. Yes.

25 Q. And do you have an understanding that the County's policy

1 is based upon state and federal law?

2 A. Yes.

3 Q. And do you have an understanding that the County's policy
4 and the state and federal law is adopted by a series of
5 attorneys both in the General Counsel's Office and the State of
6 California that they work with?

7 A. Yes.

8 Q. Now, you receive regular training updates on that as you
9 go through your career, don't you?

10 A. We do.

11 Q. And, in fact, as a supervisor, you also teach others about
12 that, don't you?

13 A. Yes. We -- I conduct training of new employees or ongoing
14 training as well.

15 Q. Now, when you interacted with Ms. Martinez on
16 March 29, 2019, did you feel like you had a good grasp and
17 understanding of what was required under the Americans with
18 Disabilities Act when you were interacting with a disabled
19 individual?

20 A. I did.

21 Q. So then why would you go Google questions or issues after
22 speaking with Ms. Martinez?

23 A. Just for my own research, to see if there was anything
24 else that I was missing, because I did -- I do want to be
25 helpful up to the point where, you know, I can in my capacity

BRIONES - REDIRECT / STONER

1 **MR. GILBERT:** Calls for a legal conclusion, lay
2 opinion, relevance, and speculation.

3 **THE COURT:** Sustained.

4 **BY MS. STONER:**

5 **Q.** In 2019, if Ms. Martinez had asked you to fill out a blank
6 FBNS form on her behalf and then had you read it back so that
7 she could verify its correctness, would you have done so?

8 **MR. GILBERT:** Speculation.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** I would not.

11 **BY MS. STONER:**

12 **Q.** If she were to arrive in the CRO in a couple of weeks from
13 now, would you do that?

14 **A.** I would direct her to the kiosk.

15 **Q.** But would you write on a blank FBNS form?

16 **A.** I would not, since we have the software for her to be able
17 to do it on her own.

18 **Q.** And if the kiosk didn't work for Ms. Martinez or another
19 individual who is blind, would you then write on a blank FBNS
20 form for that person?

21 **MR. GILBERT:** Incomplete hypothetical. Speculation.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** I would not.

24 **BY MS. STONER:**

25 **Q.** In 2019, do you know if the FBNS form was available online

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, March 27, 2024

Ana Dub

Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG
CSR No. 7445, Official United States Reporter

EXHIBIT B

Volume 3

Pages 362 - 557

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Thomas S. Hixson, Magistrate Judge

LISAMARIA MARTINEZ,)	
)	
Plaintiff,)	
)	
VS.)	NO. 3:20-CV-06570 TSH
)	
COUNTY OF ALAMEDA,)	
)	
Defendant.)	
_____)	

San Francisco, California
Thursday, March 28, 2024

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Plaintiff:

TRE LEGAL PRACTICE
1155 Market Street, Tenth Floor
San Francisco, California 94103
BY: TIMOTHY R. ELDER, ATTORNEY AT LAW

UNDAUNTED LAW FIRM, P.C.
600 California Street, Seventh Floor
San Francisco, California 94108
BY: S. TOMIYO STONER, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG
CSR No. 7445, Official United States Reporter

APPEARANCES: (CONTINUED)

For Defendant:

ORBACH HUFF & HENDERSON LLP
6200 Stoneridge Mall Road, Suite 225
Pleasanton, California 94588

BY: KEVIN E. GILBERT, ATTORNEY AT LAW
NICHOLAS D. FINE, ATTORNEY AT LAW

Also Present:

Lisamaria Martinez
Michelle Korosy, Paralegal
Matthew Yankee, County of Alameda

YANKEE - DIRECT / STONER

1 A. Yeah.

2 Q. -- been discussing?

3 A. That's it.

4 Q. I think, hopefully, I've got it by now.

5 And do you understand the policy I just stated to comply
6 with the Americans with Disabilities Act?

7 A. I do.

8 Q. Okay. And you're one of the key individuals at the
9 Clerk's Office responsible for training employees about
10 the County's policies with regard to the ADA?

11 A. I'm typically not the one directly involved in training
12 the new employees. That would be the front-line supervisors
13 that do that. So have I personally trained most of the
14 employees? No, I've not personally trained them.

15 Q. But do you take responsibility for making sure that the
16 employees are properly trained as to --

17 A. Yes. I would oversee --

18 Q. -- the ADA?

19 (Simultaneous speaking. Stenographer interrupts for
20 clarification of the record.)

21 BY MS. STONER:

22 Q. As to the ADA.

23 A. Yeah. Generally speaking, yes.

24 Q. Okay. Thank you.

25 And do you understand that sometimes the ADA requires a

1 public entity to furnish appropriate auxiliary aids and
2 services?

3 **A.** Yes.

4 **Q.** And do you know generally what auxiliary aids and services
5 are?

6 **A.** Yes. We've done so on multiple occasions.

7 **Q.** Okay. So I'm going to be asking a number of questions
8 about specific auxiliary aids and services. I don't want this
9 to be a memory quiz. Would it refresh your recollection about
10 the specifics of that document if I gave you Code 28 C.F.R.
11 35.104 to review?

12 **MR. GILBERT:** Speculation.

13 **BY MS. STONER:**

14 **Q.** I can ask -- you know what? I can ask you the question;
15 and if needed, I have no issue providing it because this is not
16 intended to be a memory quiz.

17 Do you agree that auxiliary aids can include qualified
18 readers?

19 **MR. GILBERT:** Calls for a legal conclusion. Lay
20 opinion. Relevance. 403.

21 **THE COURT:** I'm going to overrule, but I'm also going
22 to caution the jury that the witness is being asked about his
23 personal understanding of the law. You are not to take his
24 testimony as a truthful statement about what the law is.

25 The Court will instruct you on the law in the jury

YANKEE - DIRECT / STONER

1 instructions. But the witness is just giving you his lay
2 understanding of what the law is, and that's all that this is.

3 **THE WITNESS:** My understanding is that it could
4 include qualified readers.

5 **BY MS. STONER:**

6 **Q.** And audio recordings?

7 **A.** I believe so.

8 **Q.** And brailled materials?

9 **A.** Yes.

10 **Q.** Screen reader software?

11 **A.** Yes.

12 **Q.** Large-print materials?

13 **A.** Yes.

14 **Q.** Other effective methods of making visually delivered
15 materials available to the individuals who are blind or have
16 low vision?

17 **A.** Yes.

18 **Q.** Acquisition or modification of equipment or devices?

19 **A.** Yes.

20 **Q.** And other similar services and actions?

21 **A.** Yes.

22 **Q.** Okay. Do you dispute that the County of Alameda is a
23 public entity?

24 **A.** No. We are a public entity.

25 **Q.** Do you dispute that Ms. Martinez fell within at least one

YANKEE - DIRECT / STONER

1 could very well be the same day that we receive it.

2 So I can't speak to how long the mail would take to get to
3 us; but as far as the transaction at our end, we would treat
4 that as essentially a same-day, high-priority item.

5 Q. In your experience, which -- in your experience, does
6 the -- does the mail ever take less than one day to get from
7 one destination to another?

8 A. No.

9 Q. Okay. And can we also agree that filing by mail, in 2019
10 at least, would have required the use of a PDF document?

11 A. It would -- right. You would have printed -- well,
12 potentially. We could have also given a blank form. So
13 someone could have received a blank form from our office and
14 had a paper copy that they filled out. So not necessarily a
15 PDF, but it could have been a PDF.

16 Q. Okay. So two options. Option one, that they could pick
17 up a blank form that's preprinted?

18 A. Correct.

19 Q. And that blank form, was that available in large print or
20 braille?

21 A. I don't believe so. Could we enlarge it if someone asked?
22 That's probably very likely that we could do that. But do we
23 have them preprinted in a larger size? No. But we do have
24 larger copy paper. If someone had asked us to take, you know,
25 the PDF and to blow it up onto bigger size paper, I would have

1 no reason to think that we could not accommodate that request.

2 Q. Was that ever offered to Ms. Martinez, to your knowledge?

3 A. I don't believe it was offered, and I don't believe it was
4 asked for. I don't believe that topic came up on either side.

5 Q. Okay. But from home, it would require accessing a PDF
6 document; is that correct?

7 A. From home, correct.

8 Q. And do you agree that Ms. Martinez went to the CRO on
9 March 29th, 2019, which is the first visit, intending to file
10 her FBNS form on that date?

11 A. That's my understanding, yes.

12 Q. And is it your understanding also that the County offers
13 business owners who have all the necessary information same-day
14 filing for FBNS forms?

15 A. Yes. If someone comes into our office, we would file it
16 at the time they come in, I mean, obviously, assuming that they
17 have proper payment, that the form's correct and all that.

18 Q. Of course. Assuming they meet the requirements?

19 A. Right.

20 Q. Okay. So is it the County's position that requiring
21 Ms. Martinez to bring someone with her to complete same-day
22 filing would be an equal opportunity to file?

23 MR. GILBERT: Calls for a legal conclusion.
24 Speculation. Opinion.

25 THE COURT: Sustained as to speculation.

YANKEE - DIRECT / STONER

1 Q. And so neither Ms. Martinez nor someone sighted would
2 necessarily be able to see that there are a variety of blank
3 forms immediately available?

4 A. They would not likely see them.

5 Q. All right. Is it the County's position that it would be a
6 violation of law for a clerk to write on a blank form for
7 Ms. Martinez?

8 MR. GILBERT: Calls for a legal conclusion.

9 THE COURT: The witness has testified he can't testify
10 on behalf of the County.

11 BY MS. STONER:

12 Q. Okay. In your role working at the County, do you believe
13 it would be a violation of law for a clerk to write on a blank
14 form for Ms. Martinez?

15 MR. GILBERT: Lay opinion. Calls for a legal
16 conclusion. Incomplete hypothetical.

17 THE COURT: Overruled, but I'll instruct the jury that
18 he's giving his personal opinion and it's not to be taken as a
19 statement of what the law is.

20 THE WITNESS: So if I understand the question, it is:
21 Do I personally believe it would be a violation of state law to
22 write on a blank -- for one of our employees to write on a
23 blank form? I do not believe that would be a violation of
24 state law.

25 \\\

YANKEE - DIRECT / STONER

1 sure in what context you're asking that question. But do we
2 have general contacts in the County Counsel's Office? Yes, we
3 do.

4 **Q.** Okay. And do you have an ADA coordinator at the County of
5 Alameda?

6 **A.** We do.

7 **Q.** Okay. Were either of those resources consulted between
8 March -- on March 29, 2019?

9 **MR. GILBERT:** Foundation. Speculation.

10 **THE COURT:** Sustained.

11 **BY MS. STONER:**

12 **Q.** Do you know if either of those resources were contacted on
13 March 29, 2019?

14 **A.** I do not know. I was, again, not present that day. I'm
15 not sure if any of the managers who were present that day
16 reached out to any of those individuals.

17 **Q.** But as you testify today, you have no reason to believe --
18 you're not going to tell me that "We called County Counsel" or
19 "We called the ADA coordinator"?

20 **A.** On that day, no.

21 **Q.** Okay. Do you remember what your counsel said during
22 opening statement about a vendor that was hired in 2018?

23 **A.** I mean, I -- we did hire a vendor in 2018, but what
24 specific statement are you saying do I recall?

25 **Q.** Okay. That's fine, actually. It's not about your

YANKEE - DIRECT / STONER

1 recollection.

2 You did hire a vendor in 2018?

3 A. I believe it was 2018 the contract was executed, yes.

4 Q. And was that vendor rolling out options for all patrons,
5 not just those with disabilities, or specifically for those
6 with disabilities?

7 A. No. The software suite was to upgrade our entire
8 Clerk-Recorder software. So it would be our cashiering system,
9 our document management system, our archival functions,
10 essentially all the business activities that we do.

11 Q. And in February of 2022, did you have designated terminals
12 or kiosks that would support accessible software?

13 A. In February of 2022? I don't recall if we did on that
14 specific date. Likely not. I believe, if my recollection is
15 correct, we first designated -- well, I should say that our
16 terminals are broadly accessible to the public. We have some
17 that are standing, some that are sitting for folks who may not
18 be able to stand for long periods of time. So I guess it would
19 depend on what specific accessibility you're asking about.

20 But we did have self-service kiosks. We've had
21 self-service kiosks in a variety of positions for years. We
22 can do things like increase the resolution on the screen and
23 all those sorts of things.

24 So it would be specifically -- I'm not sure what
25 accessibility function you're addressing.

YANKEE - DIRECT / STONER

1 Q. Yes. Okay. Did -- at what point in time, to the best of
2 your recollection, was JAWS software installed on the kiosks in
3 the CRO?

4 A. I believe that was first done in October of 2022.

5 Q. And in 2022 when JAWS was installed, what would JAWS
6 access on that kiosk? What type of document?

7 A. We could bring up a variety of our forms on that.

8 Q. What file format? Sorry.

9 A. It would -- I mean, the computer would be set up for
10 bringing up our Web forms. However, we have IT on-site. So if
11 someone were obviously having difficulty with JAWS and that,
12 they could probably access the document in a Word format, which
13 is the base format that we build the PDF off of, since they're
14 all also on our, you know, internal network drive as -- as Word
15 documents. So there's a good chance that we could bring it up
16 that way as well.

17 I don't believe it was ever asked for, but I would assume
18 there's a variety of ways that our IT staff could bring those
19 documents up fast.

20 Q. Does your IT staff have any specialized training in
21 accommodating persons with disabilities?

22 MR. GILBERT: Speculation. Foundation.

23 THE COURT: Overruled.

24 THE WITNESS: I'm not over -- or I don't manage our IT
25 unit; so I can't speak specifically to what type of training

1 they've received.

2 **BY MS. STONER:**

3 **Q.** Okay. But you can speak to the fact that the kiosks were
4 accessible to the public at large for a long time, but screen
5 reader software was only installed in October of 2022?

6 **A.** Correct.

7 **Q.** Is it your testimony that the County now allows the kiosk
8 to provide same-day service for people who rely on screen
9 readers to navigate print documents?

10 **A.** You're -- yes, we do same day, but that doesn't mean that
11 we wouldn't have before. Prior to having our screen reader
12 software installed, clerks or audit associates or any staff
13 member could assist and actually verbally read the forms out.

14 And I've actually done so myself to a sight-impaired
15 person before our screen reader software. Or they use one of
16 our kiosks and I read each field and then directed the mouse to
17 the field for them to fill out and have them personally type
18 that in.

19 So while the software wasn't installed until October of
20 2022, we still certainly could read those forms in a different
21 way to sight-impaired people, if requested, and I can testify
22 that I have done so.

23 **Q.** And when did you begin doing things that way? When did
24 that become the policy of the Clerk-Recorder?

25 **A.** I don't think there was a specific policy. As I stated

YANKEE - DIRECT / STONER

1 before, we do everything that we possibly could to accommodate
2 the individual. And this individual came in and specifically
3 asked for that accommodation, and we were glad to comply with
4 it.

5 Q. Okay. But when did that occur? What date did that occur?

6 A. I don't recall. I mean --

7 Q. Do you recall the year?

8 A. I don't. I mean, it would have been after Ms. Martinez
9 visited.

10 Q. After Ms. Martinez visited. Okay.

11 Okay. So in 2023, was there a new FBNS wizard installed
12 on the computer kiosk?

13 A. I believe it was first installed in December of 2022, in
14 fact, not 2023, in our internal kiosk and then rolled out to a
15 Web format so that folks could access it at home in -- later in
16 2023.

17 Q. Okay. So as you sit here today, are you completely
18 confident that the computer systems currently in place at the
19 CRO would enable a screen reader user to complete an FBNS at
20 the CRO and get it filed same day?

21 MR. GILBERT: Vague. Overbroad.

22 THE COURT: Overruled.

23 THE WITNESS: Am I completely confident the screen
24 reader software alone could do that? I can't say I'm
25 completely confident, and that's why we have backups available.

YANKEE - DIRECT / STONER

1 Right? So that's why staff can personally read, for instance,
2 the form and guide a sight-impaired person to the various
3 forms. I think it's an excellent tool, but I wouldn't say we
4 exclusively rely upon that.

5 **BY MS. STONER:**

6 **Q.** Okay. If the computer kiosk system failed for any
7 reason -- technical issue, wasn't usable by the particular
8 individual in question, maybe they're deaf-blind, something
9 like that -- would you today allow a clerk to write on a blank
10 FBNS for a person with a disability?

11 **A.** On a blank form?

12 **Q.** Yes.

13 **A.** If the kiosk failed?

14 **Q.** Yes.

15 **A.** Yes.

16 **Q.** Okay. Do you know what the budget of the County of
17 Alameda is?

18 **A.** The entire County?

19 **MR. GILBERT:** Overbroad. Relevance.

20 **BY MS. STONER:**

21 **Q.** Do you have a general sense of the -- you know what?
22 Actually --

23 **THE COURT:** Overruled.

24 **BY MS. STONER:**

25 **Q.** Do you have a general sense of the budget of the County of

YANKEE - DIRECT / STONER

1 Alameda?

2 **A.** Generally. I couldn't tell you the latest budget figure,
3 though. I'm not involved in the overall County budget.

4 **Q.** I'm not asking if it's -- I'm not asking a dollar amount,
5 but I'm asking: Is it in the millions? The hundred thousands?
6 The billions?

7 **MR. GILBERT:** Foundation. Speculation.

8 **THE COURT:** Overruled.

9 **BY MS. STONER:**

10 **Q.** If you know.

11 **A.** I mean, I believe our agency has approved expenditures of,
12 I think, around 40 million. So -- and we're a small part of
13 the County. So I know it would certainly be millions. I don't
14 know how much more.

15 **Q.** Okay. And are the sources of revenue received by
16 the County, do they include state funding?

17 **MR. GILBERT:** Overbroad. Relevance. 403 as to the
18 receipt by the County.

19 **THE COURT:** Overruled.

20 **THE WITNESS:** My understanding is that the County
21 receives state funds in some agencies. I don't believe the
22 Clerk-Recorder's Office directly receives state funding unless
23 it would be a pass-through from the general fund.

24 But that being said, we're also what we refer to as a
25 net-negative County department, which means we bring in

YANKEE - DIRECT / STONER

1 revenues through a variety of sources, like transfer tax,
2 through recording fees. So what we cost the County is less
3 than what the revenues we bring in. So we actually put money
4 back into the general fund.

5 So if -- for instance, if they gave us \$10 million from
6 the general fund for services, for example, we would actually
7 put back 20 million.

8 Those aren't exact numbers. I'm just --

9 **BY MS. STONER:**

10 **Q.** Okay.

11 **A.** -- illustrating the point.

12 **Q.** So if you gave me a dollar and I gave it back to you, have
13 I received a dollar from you?

14 **MR. GILBERT:** Calls for a legal conclusion.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** If you gave me a dollar and I gave it
17 back to you, I --

18 **BY MS. STONER:**

19 **Q.** No, no, no. If I ask you "Can I borrow a dollar?" and you
20 give me a dollar and then tomorrow I bring it back and I say,
21 "Thank you. Here's your dollar and, in fact, I might even
22 throw on 25 cents for the courtesy," would you deny that you
23 gave me a dollar, that I received it from you?

24 **A.** I would say the prior day I'd given you a dollar.

25 **Q.** Yeah.

YANKEE - DIRECT / STONER

1 **A.** Now, if you're trying to relate that to the budget and
2 say, you know, do we receive the money from the state first
3 before we replenish it later, I'm not sure that it works in
4 that same scenario. I think that --

5 **Q.** Before we proceed on this line of questioning, I do
6 want --

7 **MR. GILBERT:** Objection, Your Honor. Can Mr. Yankee
8 finish his answer?

9 **THE COURT:** Yes.

10 Please finish your answer.

11 **THE WITNESS:** So I want to speak to that because you
12 set that up with a timing thing; whereas, in day one we
13 receive -- I receive -- or you receive something from me and
14 then, day two, you pay it back let's say with interest; right?

15 I'm not saying that that's how the County operates or at
16 least how our budget operates, where day one we receive like an
17 injection of funds from the general fund and then, day two, we
18 send it back.

19 We very well may on a day-to-day basis have more general
20 fund revenue coming in. We may never need to actually, for
21 lack of a better term, withdraw from a general fund account.

22 So I want to be very clear that the scenario you presented
23 is not necessarily how the budget operates.

24 **BY MS. STONER:**

25 **Q.** Understood. And let me back up a little bit more to you.

YANKEE - DIRECT / STONER

1 The general fund of the County of Alameda receives state
2 funding; correct?

3 A. I wouldn't know specifically. I know that we receive
4 grant funding in various programs. How the general fund
5 ultimately is made up and what percentage, if any, comes from
6 the state, I couldn't definitively tell you.

7 Q. Okay. But the County -- or the Clerk-Recorder's Office
8 receives money from the general fund?

9 A. Again, that's why I wanted to -- we're net negative. We
10 actually send money back to the general fund.

11 Q. So no money ever comes from the general fund into the
12 Clerk-Recorder's Office?

13 MR. GILBERT: Overbroad. Vague.

14 THE COURT: Overruled.

15 THE WITNESS: I wouldn't know specifically how -- if
16 we need to spend money, for instance, you know, is that coming
17 out of the general fund? Is that coming -- how that's all --
18 how would you account for those dollars. At the end of the
19 day, we send more back than we get from the general fund.

20 BY MS. STONER:

21 Q. Okay.

22 A. So we contribute to the general fund. We make the general
23 fund bigger --

24 Q. Okay.

25 A. -- based on our operations.

YANKEE - DIRECT / STONER

1 Whether or not there's some type of do we have to make a
2 withdrawal from the general fund before we put money back, I
3 wouldn't know the specific timing of that. I'm not in the
4 general accounting unit of our agency. So that's a very
5 technical finance question I'm not prepared to answer.

6 **Q.** Okay. Would any document, including the budget of the
7 County of Alameda, which includes budget overviews and specific
8 projections as to the Clerk-Recorder's Office, refresh your
9 recollection on that point?

10 **A.** It's not that I'm not remembering. I mean, like I said,
11 we send money back to the general fund. So I'm very clear that
12 we are a net-negative County department, which -- you know,
13 which means that we send money back, that we bring in more
14 revenue than we cost the County. So we make the general fund
15 bigger, and that's happened on a consistent basis since I've
16 been there.

17 You're asking specifically how does the accounting work,
18 which is how are transfers made in and out; and there's no,
19 I believe, budget document that's going to illustrate that; or
20 if there is, it certainly isn't something I've seen before so I
21 wouldn't recollect something.

22 **MS. STONER:** Okay. Thank you.

23 One moment.

24 (Pause in proceedings.)

25 \\\

1 **BY MS. STONER:**

2 **Q.** Between 2019 and now, has your position changed at all as
3 to whether it would be a violation of the County's policy to
4 have a clerk write on a blank FBNS form for a customer with a
5 disability who could not write themselves?

6 **MR. GILBERT:** Misstates testimony. Overbroad. Vague.
7 Incomplete hypothetical and speculation.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** I would say our general policy has still
10 been that we don't fill out blank forms.

11 Have -- my understanding is also that we've done so on
12 some instances because we now have a way to independently have
13 a customer verify what was entered in, specifically for FBN
14 forms.

15 So that if a clerk were to type something into the --
16 their -- the writing -- you called it the Wizard -- that we
17 could turn that around to a sighted person. Someone who's not
18 a sighted person, we could use the screen reader software to
19 have that independently verify what was written.

20 **BY MS. STONER:**

21 **Q.** My question is about handwriting. Between 2019 and the
22 present, has your understanding -- with regard to whether there
23 should be an exception made to the policy for an individual who
24 cannot write for themselves because of a disability, has your
25 understanding changed between 2019 and now?

YANKEE - DIRECT / STONER

1 **MR. GILBERT:** Vague. Incomplete hypothetical.

2 **THE COURT:** Overruled.

3 **THE WITNESS:** I'm not specifically understanding the
4 question you're asking. Are you asking would we hand write a
5 form or use the kiosk on behalf of a customer?

6 **BY MS. STONER:**

7 **Q.** I'm asking about handwriting.

8 **A.** I don't recall, at least any instances that were brought
9 to my attention, where we had staff handwriting -- using their
10 own handwriting, write a blank form for a customer.

11 May that have happened at some point? Like I said, we do
12 empower our managers to make a lot of those decisions. And
13 since -- you know, in 2019, we discussed that I was a division
14 chief for the Clerk-Recorder's Office. I'm an assistant
15 controller now, and so I'm far more removed from the day-to-day
16 activities of the Clerk-Recorder's Office.

17 So could that -- potentially could a manager have made a
18 decision at some point to have a clerk do that? That's
19 possible. So I wouldn't say it's out of the realm of
20 possibilities, but I'm not personally aware of that.

21 **Q.** Okay. So your personal view hasn't changed between 2019
22 and now with regard to the scenario I described?

23 **MR. GILBERT:** Misstates testimony.

24 **THE WITNESS:** I don't believe I expressed --

25 **THE COURT:** Overruled.

YANKEE - DIRECT / STONER

1 **THE WITNESS:** I'm sorry.

2 **THE COURT:** Overruled.

3 You can answer.

4 **THE WITNESS:** I don't believe I expressed a personal
5 view. I expressed personally what I'm aware of.

6 I'm not aware of anyone who's done that in our office, any
7 staff member who's handwritten a form, but that's just that I'm
8 aware of, my viewpoint.

9 **BY MS. STONER:**

10 **Q.** Has your personal view changed on whether it would be
11 proper or improper to do so?

12 **A.** As a general policy, we would discourage staff from doing
13 that. If a specific instance might require that and there's --
14 you know, we receive a thousand customers in person every week,
15 so there's a variety of special circumstances that may come up.

16 So may there be a scenario or some scenarios where that
17 might have to happen? That's possible. But as a general
18 policy, that hasn't changed. We don't have clerks hand fill
19 out forms for customers.

20 **MS. STONER:** Okay. Thank you.

21 I'll pass the witness.

22 **THE COURT:** All right. At this point, we are going to
23 take our midmorning break for about 15 minutes.

24 So I'll ask my courtroom deputy to bring the jury to the
25 jury room.

1 March 29th, 2019?

2 A. I believe there was effective communication that day.

3 Q. And because there was effective communication, would, in
4 your opinion, the County have been required to provide any
5 further accommodations or aids or auxiliary services?

6 A. No.

7 Q. Thank you.

8 Now, even though the County was not required to do so,
9 would the offer to allow an expedited mail-back of her FBNS
10 form been a type of accommodation?

11 A. Yes. That's not something we would have ordinarily done
12 to anyone mailing in something that needed corrections. That
13 would have been a specific accommodation made for Ms. Martinez.

14 Q. And that's not something that's offered to everyone else?

15 A. Correct.

16 Q. And the expedited process, how quickly would an expedited
17 return have been if she would have mailed it in?

18 A. It would have depended on the mail; but once we received
19 it, that would have likely been a same day, if possible,
20 probably the latest, the following day if we couldn't get to it
21 the day we received the mail.

22 Q. And we also heard a little bit about funding and budgets.

23 Now, how long have you been with the CRO division?

24 A. I've been with the Auditor-Controller/Clerk-Recorder
25 agency for about 12 1/2 years.

1 Q. And is it fair to say that you are the highest ranking
2 employee in the Clerk-Recorder's Office for the County of
3 Alameda currently?

4 A. Yeah. The highest level civil service employee, yes.

5 Q. And then there would be an elected official that serves
6 beside you?

7 A. Correct.

8 Q. And that's an elected position, but you would be a civil
9 service position?

10 A. Yes. And I believe she has a chief deputy that she gets
11 to appoint that's outside the civil service system.

12 Q. Now, within that role, are you familiar with the CRO's
13 budget and financial operations?

14 A. Yes.

15 Q. And at any time since January of 2019 to the current, are
16 you aware of any time that the CRO's -- CRO's office has
17 received and utilized funds directly from the State of
18 California?

19 A. Directly, no.

20 Q. Thank you.

21 Now, let's step back and kind of do more broad picture, if
22 we could.

23 When did you first come to the County of Alameda?

24 A. My employment began in November of 2011.

25 Q. What was your position at that point?

YANKEE - CROSS / GILBERT

1 include me. It may include managers below me. It may include
2 Melissa Wilk, who's the elected official; and then it may
3 include representatives from other relevant county departments,
4 such as potentially County Counsel or the County
5 Administrator's Office, whichever departments it may touch.

6 **Q.** Now, we've heard a little bit about written policies. Are
7 all policies of the County of Alameda CRO required to be in
8 writing?

9 **A.** No.

10 **Q.** Are they in writing?

11 **A.** Many are not.

12 **Q.** So how does the policies of the CRO, how do they relate to
13 state and federal law, for example?

14 **A.** Many of them are based directly on state and federal law,
15 which would make writing a policy rather redundant. Oftentimes
16 the policy is the effective way to implement a federal or state
17 law, and that's oftentimes conveyed to employees through
18 on-the-job training that they're required to go through.

19 **Q.** So if there was a state law on an issue that said "Thou
20 shall do this" or "Thou shall not do that," would that be
21 adopted by the County as the policy, or would there be a
22 separate written policy that would simply cut and paste it and
23 say, "Here's our policy which is the same"?

24 **A.** It would essentially be the policy of what the state or
25 federal law is.

1 Q. So the County would simply rely upon the state or federal
2 law as its policy for the expectations of its employees?

3 A. Essentially, yes.

4 Q. Thank you.

5 Now, as far as those policies, how are the employees of
6 the CRO advised on those policies?

7 A. It can be a variety of methods. Typically, it's
8 on-the-job training. Every new employee in our agency is
9 required to go through a six-month training program in three
10 separate units, and they work with experienced leads and
11 supervisors to make sure they can competently perform their
12 job.

13 Now, if there happens to be new policies that are
14 introduced, you know, outside of the training process, then
15 that would be communicated either through a staff meeting,
16 potentially an e-mail, a memorandum. It could take a variety
17 of forms.

18 Q. And does that training also include discussion and
19 direction on how to comply with the Americans with Disabilities
20 Act?

21 A. It does, yes.

22 Q. Now, does the County also have an ADA coordinator
23 that's --

24 A. I believe every agency within the County does, in fact.

25 Q. So does the CRO have its own?

YANKEE - CROSS / GILBERT

1 A. The CRO is a division of the
2 Auditor-Controller/Clerk-Recorder agency, and our agency does
3 have an ADA coordinator, correct.

4 Q. And is that ADA coordinator someone who is available to
5 all the employees in the CRO?

6 A. Yes.

7 Q. Are they allowed to reach out and receive direction or
8 guidance from that individual as necessary?

9 A. Yes.

10 Q. And is there also regular training that's provided to the
11 CRO employees during the course of their employment?

12 A. Yes.

13 Q. Do they also receive initial training when they first
14 begin and they go through the rotations you talked about?

15 A. Yes.

16 Q. Now, continuing on, do you know who the CRO -- or, excuse
17 me -- who the ADA coordinator was when Ms. Martinez came in on
18 March 29th, 2019?

19 A. I do.

20 Q. Who was that individual?

21 A. Sabrina Amador.

22 Q. So that position was filled and there was somebody serving
23 in it at the time that Ms. Martinez came in?

24 A. That's correct.

25 Q. Thank you.

YANKEE - CROSS / GILBERT

1 that as another accommodation that we could make.

2 **Q.** Well, if there's effective communication and there's no
3 legal requirement for additional accommodations, why would the
4 CRO's office continue trying to provide additional help and
5 support?

6 **A.** I mean, we try to go above and beyond what's just legally
7 required of us. We strive for excellent customer service.
8 We're kind of proud of the fact that we have a 4.5 Yelp rating,
9 in fact, online, which for a government agency is fairly
10 impressive since we're not all that interesting. So we really
11 do strive to provide the highest level of customer service.

12 **Q.** It's impressive that you actually monitor your Yelp
13 ratings.

14 **A.** We do and respond to customers.

15 **Q.** Good.

16 Now, after you looked into this matter, did anyone ever
17 tell you that they were having trouble communicating with
18 Ms. Martinez?

19 **A.** No.

20 **Q.** Did anyone ever tell you that Ms. Martinez was having
21 difficulty communicating with anyone with the CRO?

22 **A.** No.

23 **Q.** Now, we talked a little bit ago about not modifying legal
24 forms, but let's turn to a specific, filling out blank forms.

25 Excuse me.

1 You mentioned earlier that the general policy -- well,
2 tell me -- tell me again, please, what is the general policy
3 regarding CROs completing blank forms if someone comes in?

4 **A.** Right. So the general policy is that we do not fill out
5 blank forms that are filed or recorded in our office. That's
6 an important distinction because we do oftentimes fill out
7 forms that are not filed or recorded in our office.

8 And to help explain the difference, a document, if filed
9 or recorded, is a legal document that the submitter prepares.
10 And we essentially act as a giant bulletin board or a library
11 to these documents, but we don't act upon these documents. We
12 don't take action on them.

13 That's very different than something like a marriage
14 license application, which is also something that we do, where
15 the County confers a license upon the individual based on the
16 information they provide to us.

17 So for many years, we've helped customers fill out
18 marriage license applications and review it with them and read
19 it back to them and all that. But when we're dealing with a
20 form that's filed or recorded, it's incumbent upon the
21 submitter to prepare that, and we just act as the intermediary
22 to make sure it's communicated to the public.

23 **Q.** Understood. Thank you.

24 So turning back to our example, if I was to come in and,
25 for example, fill out a copy request, I want to get a copy of a

1 public document, is that a legal form?

2 A. It is not. That would be like a work order form for us.

3 Q. Would that be something that a CRO representative could
4 assist me in filling out?

5 A. Yes, absolutely.

6 Q. Now, turning to a legal document, an FBNS form, generally,
7 what is the practice of the CRO's office in regards to filling
8 out blank forms?

9 A. Generally, that's not something that we do.

10 Q. And let's be really clear for a second. If someone comes
11 in with a completed FBNS or business form, will the County ever
12 edit that completed form?

13 A. We will never edit a form that's already been completed.

14 Q. And then switching to a blank document, are there
15 occasions when a County may help prepare a blank new document,
16 legal form?

17 A. There have been occasions, yes.

18 Q. Can you explain to the jury, if the policy of the CRO is
19 generally not to do this but there are occasions that it
20 happens, how is that -- how do you reconcile those? How does
21 that work?

22 A. It would be on a case-by-case basis based on the unique
23 circumstances.

24 To put it in perspective, we file and record annually
25 anywhere from, on a slow year, a quarter of a million documents

1 to a large year, half a million documents. So if our staff
2 were to be regularly filling out recorded and filed forms for
3 customers, that could potentially be an undue burden.

4 And while the FBN represents a single-page fairly simple
5 form, some of the documents that we file/record in our office
6 are dozens, if not even hundreds, of pages long and contain
7 complex financial information, legal parcel numbers, many
8 things that our staff would struggle to complete in a timely
9 basis.

10 So, generally speaking, it's not our policy to do this;
11 but on certain occasions where the supervisor or another
12 manager or even a staff member felt that it's necessary to do
13 so, we have that discretion.

14 Q. Now, if an individual with a disability who is unable to
15 complete the form comes into the office and needs to complete a
16 form, would that be the type of exemption or unique situation
17 where the CRO might help fill out that form?

18 A. Yes, that might be one of the circumstances where we do.

19 Q. Now, we've also heard -- and let's tie this back a little
20 bit.

21 You mentioned that there's some computers that are
22 available at the CRO's office; is that right?

23 A. That's correct.

24 Q. And let me go back one step further.

25 You have the computers that the clerk-recorders use at the

1 counter; is that right?

2 A. Correct.

3 Q. Are there other computers that are available to the public
4 that are --

5 A. Yes. So we have self-service computers.

6 Q. And where are those in proximity to what we're talking
7 about?

8 A. I mean, they're on the same floor of the building. They
9 would be, roughly speaking, about a distance from where I am to
10 if you would just exit those doors and make a left or right.
11 So, you know, a few second's walk away.

12 Q. 50 to 75 feet, roughly?

13 A. Roughly, yeah.

14 Q. Okay. How long have those computers been around or have
15 there been computers available generally?

16 A. I mean, I -- they predated me, and I would think that
17 they've been available since our building opened in '99.

18 Q. Are those computers equipped with access to the materials
19 that people can use to prepare forms or legal forms for
20 submission to the CRO?

21 A. It depends on the form. Some of the more complex
22 recording forms, no, we don't do that; but for FBNs, yes.

23 Q. Now, has the County tried to update its available forms,
24 how people can access them, over the years?

25 A. Yes.

1 Q. Is it always -- are people always required to come into
2 the CRO in order to get the forms, or are they available some
3 other means?

4 A. They're available on our website.

5 Q. Okay. And how long ago did they become available on your
6 website?

7 A. Again, that predates me, so I could tell you at least
8 12-plus years.

9 Q. Thank you.

10 Now, we've heard something about, I want to say, a
11 software suite. Does that sound familiar?

12 A. Yes.

13 Q. Can you explain what that is, please?

14 A. Yes. So the -- all the functions that our office
15 performs, which includes recording documents, which includes
16 issuing marriage licenses, copies of birth, death, marriage
17 certificates, fictitious business names, notary notes, that's a
18 lot of record storage. So we need a very complex record
19 management system.

20 We also need a portion of that system to account for all
21 the transactions that we do, which is to sell copies, the
22 recording fees, the transfer tax that we collect. So this
23 software system is a one-size-fits-all type of thing. It does
24 all those features.

25 And part of that also is the public access portion of it,

1 which is how we allow our customers to interface with the
2 system, such as the online submission of a fictitious business
3 name statement or searching our index or other varieties of
4 services they might want.

5 Q. Has the County tried to update that system periodically
6 through the years?

7 A. Yes.

8 Q. And prior to Ms. Martinez coming in 2019, had there been
9 an effort by the County to update that software suite?

10 A. Yes. The contract for that was signed, I believe, the
11 prior year, in 2018.

12 Q. Did that have anything to do with Ms. Martinez?

13 A. No.

14 Q. Now, can you explain, just in general terms, what that
15 contract encompassed and dealt with?

16 A. It encompassed all those things I just spoke of. We --
17 our old system, I believe, was initially, that we were using at
18 the time, was I believe put into place in 1999-ish time frame.
19 So we were running on a system that was close to 20 years old,
20 which for a software is very old; and it was leading to
21 problems, particularly as our office tried to implement new
22 statewide legislation that had additional requirements on it.
23 So it was very important that we update our software system.
24 So that was all put into place.

25 And, in fact, I believe we issued one or two prior

1 requests for proposals, which is where contractors can bid on
2 large County contracts, but those were not successful in
3 delivering a new system to us.

4 But that finally was successful. We found a vendor. In
5 fact, it was the same vendor; and they essentially upgraded our
6 existing software suite with their new software suite. And
7 that process started in 2018 with the signing of the contract;
8 but it's a multiyear process that ran into significant
9 challenges throughout the pandemic. In fact, it had not even
10 been completed before the pandemic started.

11 **Q.** When was the new software finally implemented and rolled
12 out?

13 **A.** It -- the online submission of FBNS, I believe, would have
14 been one of the last portions of it, and I believe that
15 occurred in December of 2022.

16 But it's also a constantly upgrading system. So as other
17 counties, including our county, request additional features,
18 those are oftentimes integrated. So we're on almost like a
19 constant upgrade system where, as new features become
20 available, we want to make sure that those are included in what
21 we offer so that customers can take advantage of them and our
22 staff can as well.

23 **Q.** Now, let's be more specific to this case regarding the
24 suite. Does this suite provide additional options for how
25 patrons can complete legal forms that need to be submitted to

1 the CRO?

2 MS. STONER: Objection. 403.

3 THE COURT: What was the objection?

4 MS. STONER: 403.

5 THE COURT: Overruled.

6 THE WITNESS: Yes. So prior to the system, there was
7 no way to electronically submit a fictitious business name
8 statement to us. You'd have needed to print out the PDF and
9 either fill it out by hand or have filled it out before you
10 printed it and then physically brought the paper into our
11 office. Whereas now, there's a portal whereas you can fill out
12 the form online and they're electronically transmitted to us.
13 And then all you would need to do is sign the form that we
14 would print out when you come to our office to finish the
15 transaction.

16 BY MR. GILBERT:

17 Q. Thank you.

18 And as far as this process, is there other improvements
19 and aspects that are going on about improving the opportunities
20 to fill out forms both in the office and remote?

21 A. Before this, we also did marriage license applications.
22 That was another one where people could fill out and submit
23 their marriage license application online. So it's not limited
24 just to the fictitious business name statement.

25 Q. Thank you.

1 And then is this software suite available in the kiosk at
2 the CRO's office?

3 A. There's a portion of it. It's called the public access
4 portion of that larger software system. And, yes, those are
5 all available at the kiosks.

6 Q. Are there kiosks that are designated for use by disabled
7 individuals?

8 A. Yes.

9 Q. And do those kiosks have any additional services or
10 equipment or software to further assist disabled individuals in
11 accessing those materials?

12 A. Yes. So we've also installed the JAWS software, which
13 I believe is Jobs Access -- I honestly forget the acronym, but
14 it's a screen reader type of software to assist individuals in
15 completing their forms.

16 Q. And the JAWS software, is it your understanding that
17 that's intended to allow sight-impaired individuals to access
18 and complete PDFs?

19 A. PDFs, as well as our interface with our online submission
20 form.

21 Q. Now, as far as the kiosk and the JAWS software that you
22 were talking about, are disabled individuals required to fend
23 for themselves when they go there? In other words, they just
24 show up at the CRO's office and here it is, deal with it --

25 A. No, no.

1 **Q.** -- or is there some other type of help or assistance that
2 comes into play?

3 **MS. STONER:** Objection. Leading.

4 **THE COURT:** Overruled.

5 **THE WITNESS:** No. We absolutely provide assistance.
6 That's -- in fact, we have a unit of our Clerk-Recorder's
7 Office specifically called the Customer Service Unit, and those
8 individuals are trained to help guide customers through the
9 process and, if customers identify that they may have specific
10 needs, to help them go through the process, and that may be a
11 variety of things.

12 We've had customers come in and indicate that they are
13 hard of hearing and may need to schedule a sign language
14 translator for a wedding ceremony in our office; or it could be
15 someone who was in an accident and didn't have use of their
16 hands and couldn't type at a kiosk and so we've helped type
17 searches for them.

18 So they're all trained to do that and help -- can help
19 guide any customer throughout our process.

20 **BY MR. GILBERT:**

21 **Q.** What are employees of the CRO taught regarding assisting a
22 disabled individual in using the kiosk?

23 **A.** They should provide as much help as they can, answer
24 questions. And then if the kiosk, you know, encounters a
25 technical error, they can do certain things like help guide the

1 mouse to various parts of the form or to read aloud parts of
2 what they're seeing on the screen if the screen reader software
3 isn't working.

4 **Q.** So let me go through that and kind of break it down.

5 Is it -- are CRO employees advised that if a disabled
6 individual needs assistance on the kiosk, that someone from the
7 CRO, whether it's the -- I think you called it the assistance
8 division. Was that --

9 **A.** Customer Service Unit.

10 **Q.** Customer Service Unit, they would go and actually
11 physically be with and assist that individual?

12 **A.** Yes.

13 **Q.** And would they stay with them for the entirety of their
14 duration while they're trying to complete these forms?

15 **A.** If that's what the customer needs, yes.

16 **Q.** And during that process, I think you mentioned that the
17 Customer Service Unit, they might read the forms or read the
18 words that are on the screen if there's problems with the JAWS
19 software.

20 **A.** Yes.

21 **Q.** And even if the -- if a customer doesn't want to use the
22 JAWS software, can they just simply ask someone from the
23 Customer Assistance Unit just to read the form to them and tell
24 them what they're looking at?

25 **A.** Yes.

1 Q. And then you mentioned, I think, moving the mouse. What
2 were you referring to on that?

3 A. Right. So if a customer is having a hard time seeing
4 where the mouse is so that they can type in the appropriate
5 field, we can help guide the mouse and so that the cursor is in
6 the appropriate field for them to begin typing.

7 Q. And is there any limits to what assistance would be
8 provided in preparing a new form that you can think of as
9 you're sitting here?

10 A. I mean, as long as they're not asking us to do something
11 that's against a policy or law, we would help them.

12 Q. So once a form is filled out, are there further measures
13 that the County takes in order to help a disabled individual or
14 even just any individual sign a form?

15 A. Yeah. We could either -- well, let me back up.

16 We would -- initially, you know, when we had those
17 situations occur, we could help guide someone's hand with the
18 pen to the appropriate signature line on the form.

19 Then I don't recall how many years ago, maybe two years
20 ago, we became aware of metal boxes, hollow metal boxes, for
21 lack of a better way to describe it, which someone who's sight
22 impaired can use to help guide them so they know to sign inside
23 the box that they can actually feel, so that they can use that
24 to help sign forms.

25 Q. So I've seen, for example, where I go to use a credit card

1 at a -- they've got the little square box that you sign in the
2 credit card machine.

3 A. Yes.

4 Q. Is that the kind of template you're talking about?

5 A. Similar, yes. It's taller so that it's easier to feel.

6 Q. So you would put that on the actual form so the
7 sight-impaired individual could feel where they would need to
8 sign?

9 A. Correct.

10 Q. How would the sight-impaired individual verify the
11 information on the form before they signed it?

12 A. Well, if they -- are you speaking of a form that was
13 completed in our office?

14 Q. Yes, sir.

15 A. We have, like I said, the JAWS software which allows for
16 an independent way to verify what it is they typed in. So they
17 could listen to it before it's printed out and then know what
18 it is that they're signing.

19 Q. And they could also, in the alternative, have someone from
20 the CRO read them the content of the form?

21 A. They could, yes.

22 Q. And these are discretions that the CRO staff has
23 currently, and has for at least the last however long since
24 this new software was implemented, to be able to provide
25 assistance to patrons?

YANKEE - REDIRECT / STONER

1 **A.** Yes.

2 **Q.** Thank you.

3 Now, does the CRO still allow electronic submissions of
4 forms?

5 **A.** Yes.

6 **Q.** And does it still allow mailing of forms?

7 **A.** Yes.

8 **Q.** So people can still record their forms by all of the means
9 that were otherwise available, and there's additional means now
10 that have been implemented by the County?

11 **A.** Yes.

12 **Q.** Are any of these methods scheduled to be prohibited or
13 ruled out or terminated or not continued?

14 **A.** No.

15 **MR. GILBERT:** Thank you.

16 Just a moment, please.

17 (Pause in proceedings.)

18 **MR. GILBERT:** Thank you, Your Honor. Nothing further.

19 **THE COURT:** Does plaintiff have any further questions
20 for this witness?

21 **MS. STONER:** Yes, Your Honor.

22 **REDIRECT EXAMINATION**

23 **BY MS. STONER:**

24 **Q.** So I believe I heard you say "our office," "our system,"
25 "we" while you were testifying just a minute ago. Is that

YANKEE - REDIRECT / STONER

1 the dedicated kiosk for -- specifically for those with
2 disabilities did not exist on March 29th, 2019; correct?

3 **A.** Correct. It was not specifically designated, but
4 obviously, it was broadly available.

5 **Q.** Okay. And the same question as to May 31st, 2019.

6 **A.** Correct.

7 **Q.** And you're not -- are you telling the jury today that it
8 is illegal for a clerk to write on a blank FBNS form?

9 **A.** I don't believe I said that.

10 **MR. GILBERT:** Asked and answered.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** I said that we can't modify a completed
13 form. I don't believe I ever said it was illegal for us to
14 fill out a blank form.

15 **BY MS. STONER:**

16 **Q.** Okay. And you're not telling the jury today that it's
17 illegal for a third party to write on a completed FBNS form,
18 are you?

19 **A.** What I've stated before is that we interpret Government
20 Code 27203, Subsection (d), to apply to our staff. Now,
21 whether or not there are other laws that would preclude
22 individuals from making adjustments, edits, modifications to a
23 legal form that's been signed under penalty of perjury, that
24 may -- very well may exist or may not exist, but that's beyond
25 our scope. We care about what our employees and our

1 representatives do. So I can't comment whether that is or is
2 not illegal. I wouldn't know.

3 **Q.** Okay. But you have no reason to believe that it is
4 illegal, as you said?

5 **A.** I said I wouldn't know one way or -- I mean, it -- I mean,
6 common sense would make me think that, you know, there may be
7 concerns with someone making adjustments to a signed and
8 completed form. I mean, obviously, if there's contractual
9 documents, checks, other things that are signed and you had
10 people changing, you know, a written instrument after it's been
11 executed, that could be a concern.

12 But, again, that's all beyond what occurred in our office
13 that day. We specifically had that Government Code that we
14 rely on for the conduct of our employees.

15 **MS. STONER:** Thank you.

16 Just one moment, please.

17 (Pause in proceedings.)

18 **BY MS. STONER:**

19 **Q.** Okay. Two weeks from now, if Ms. Martinez walks into the
20 CRO with an FBNS, would the CRO be willing to assist her in
21 completing it if she's unable to do so?

22 **MR. GILBERT:** Speculation. Incomplete hypothetical.

23 **THE COURT:** Yeah. Sustained.

24 **BY MS. STONER:**

25 **Q.** If Ms. Martinez walks into the CRO two weeks from now,

1 will the County agree to fill out a blank unsigned paper FBNS
2 form for her if needed to renew her FBNS?

3 **MR. GILBERT:** Speculation. Incomplete hypothetical.

4 **THE COURT:** Overruled.

5 **THE WITNESS:** As I stated, it would be a case-by-case
6 basis. It would be within the realm -- a blank one, it would
7 be within the realm of possibilities.

8 Again, our general policy would be not to do so; but in
9 evaluating her specific circumstances at that hypothetical
10 visit, that's potentially something that we could offer.

11 **BY MS. STONER:**

12 **Q.** Did any clerks offer to transcribe information onto a
13 blank FBNS form for Ms. Martinez back on March 29th, 2019?

14 **MR. GILBERT:** Speculation and foundation.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** I'm not aware of that being either asked
17 for as an option or offered as an option.

18 **MS. STONER:** Okay. Thank you.

19 No further questions.

20 **THE COURT:** Does defendant have any further questions
21 for the witness?

22 **MR. GILBERT:** No, Your Honor.

23 **THE COURT:** Thank you. You may step down from the
24 witness stand.

25 (Witness excused.)

GRECO - DIRECT / ELDER

1 **THE COURT:** Good afternoon, everyone. Please be
2 seated.

3 Plaintiff, please call your next witness.

4 **MR. ELDER:** Your Honor, plaintiff calls Lucy Greco.
5 May Ms. Korosy bring her to the courtroom?

6 **THE COURT:** Yes.

7 **MR. ELDER:** Okay.

8 (Witness enters the courtroom and steps forward to be sworn.)

9 **THE COURT:** And if you would escort her to the witness
10 stand, that would be appreciated.

11 (Pause in proceedings.)

12 **THE CLERK:** Ms. Greco, I am the Courtroom Deputy, and
13 I'm going to swear you in. So if you could raise your right
14 hand, please.

15 **LUCIA GRECO,**
16 called as a witness for the Plaintiff, having been duly sworn,
17 testified as follows:

18 **THE WITNESS:** I do.

19 **THE CLERK:** Thank you. You have been sworn.

20 **DIRECT EXAMINATION**

21 **BY MR. ELDER:**

22 **Q.** Good afternoon, Ms. Greco.

23 **A.** Good afternoon.

24 **Q.** Could you please speak your full legal name for the
25 record?

GRECO - DIRECT / ELDER

1 A. Sure. My legal name is Lucia Greco.

2 Q. And where do you reside?

3 A. I live in Berkeley.

4 Q. Are you blind?

5 A. Yes, I am totally blind.

6 Q. And when you say "totally blind," what do you mean?

7 A. I have no light perception and no usable vision.

8 Q. And are there degrees of blindness?

9 A. Many, many, many different degrees.

10 Q. Okay. How are you currently employed?

11 A. I am a digital accessibility expert for the University of
12 California.

13 Q. And are you associated with a particular campus or
14 UC-wide, or what is the nature of your position?

15 A. My primary campus is Berkeley, but my role expands across
16 the entire University of California.

17 Q. Do you operate a small business in addition to your
18 full-time day job?

19 A. Yes. I have a small consulting business.

20 Q. And in December of 2022, did you determine that you had a
21 need to file what was known as an FBNS form with the
22 County of Alameda?

23 A. Yes.

24 Q. And did Ms. Martinez's counsel contact you and ask you to
25 share any experiences that you might have with filing the FBNS

GRECO - DIRECT / ELDER

1 form at the Oakland Clerk-Recorder's Office?

2 A. Yes.

3 Q. And did you, in fact, go to the Oakland Clerk-Recorder's
4 Office on approximately December 15th, 2022, to file an FBNS
5 form for your business?

6 A. Yes, I did.

7 Q. Now, when you first arrived at the CRO or the
8 Clerk's Office, what did you do?

9 A. When I located the right part of the office to go to, I
10 approached the desk. Because it was a fairly empty time, I was
11 able to go directly to the desk and requested the form.

12 Q. And what did you say?

13 A. I told them I would need the FBNS, and they handed me the
14 form on a thing. And I said, "Would I be able to get some
15 assistance to fill this form out," as I was not able to fill it
16 out independently.

17 Q. And so you asked for assistance. Did they offer to do
18 anything for you?

19 A. Yes. She said to hold on a minute and she would be -- she
20 would give me a hand.

21 Q. And did she offer to do anything more specific after that?

22 A. She proceeded to ask me the questions on the form and
23 start filling it out until we got to one question I wasn't
24 certain of the answer to.

25 Q. So as to writing on this blank FBNS form, this act of

GRECO - DIRECT / ELDER

1 transcribing where you were speaking answers and she was
2 writing things down --

3 A. Correct, yes.

4 Q. -- did she offer that first, or did you ask for that
5 first?

6 A. I asked for assistance, and she said, "One moment. I'll
7 give you a hand."

8 Q. So you asked for assistance generally?

9 A. Correct, yes.

10 Q. And then she offered to write and transcribe the
11 information you spoke onto the form; is that right?

12 MR. GILBERT: Objection. Leading.

13 THE COURT: Sustained.

14 THE WITNESS: I asked for assistance --

15 THE COURT: Wait.

16 You need to rephrase the question.

17 MR. ELDER: Yeah.

18 Q. Did you -- your first inquiry of them, did you -- did you
19 specifically ask for assistance with transcribing information
20 you spoke onto the paper form?

21 A. I believe my actual request was "Can I get some assistance
22 filling this out, please, as I am not able to see the form and
23 I am not able to write on the form?"

24 Q. And did she then offer to transcribe the information onto
25 the form for you?

1 A. Her words were she would help me.

2 Q. Okay. Did the clerk there at the counter listen to the
3 words that you were speaking?

4 A. Yes.

5 Q. And did she then write down those words onto the paper?

6 A. Yes.

7 Q. I think you mentioned you had to make a call to verify
8 some information; is that right?

9 A. Correct. I wasn't aware of what type of business I was
10 requiring, so I needed to check with my husband what we put on
11 our taxes.

12 Q. And did you then return to the counter to finish your
13 form?

14 A. Correct, yes.

15 Q. So that whole process of speaking information, then
16 writing it down, you asking your husband for some information,
17 then coming back to the counter, about how long would you
18 estimate it took for you to transcribe all of the information
19 onto your paper form?

20 A. At most, 15 minutes or less.

21 Q. And specifically, that process of just -- not the complete
22 filing of the form, but just that step of transcribing
23 information onto the paper form, listening to it, that exchange
24 of filling out the form, how much time would you estimate that
25 step took?

1 A. That's -- that portion, I think, took probably 10 to
2 15 minutes, like I said.

3 Q. Okay. Did you encounter more than one clerk that day in
4 this process of going through your form?

5 A. Yes. When I returned to the counter after making my phone
6 call, there was another clerk there. And I indicated that I
7 had been working with a lady, and the gentleman said, "One
8 moment," and the lady came back and said, "I'll help you finish
9 now."

10 Q. Did anyone ever interrupt the process and say that this
11 shouldn't continue?

12 A. No, in no way.

13 Q. Do you recall signing a declaration in this case?

14 A. The only signature I recall was when I went over to the
15 other side of the building to actually file the form.

16 Q. Apologies. Do you recall in this litigation that --

17 A. Oh.

18 Q. -- you signed a declaration, which is testimony under oath
19 in writing?

20 A. Oh, about this -- about these incidences, yes, I did.

21 Q. And do you recall in your declaration stating that you
22 estimated that the --

23 MR. GILBERT: Objection. Hearsay.

24 THE COURT: Yeah. Sustained.

25 \\\

1 BY MR. ELDER:

2 Q. Ms. Greco, do you recall another occasion stating that it
3 only took five minutes --

4 MR. GILBERT: Objection. Hearsay.

5 BY MR. ELDER:

6 Q. -- to work with the clerk --

7 THE COURT: Sustained.

8 BY MR. ELDER:

9 Q. -- to fill out the form?

10 THE COURT: Sustained.

11 BY MR. ELDER:

12 Q. How confident you are -- how confident are you, sitting
13 here today, Ms. Greco, that 10 to 15 minutes was the correct
14 estimate of the time it took back in December of 2022?

15 A. I am -- I mean, I -- it was a long time ago. I'm not
16 100 percent confident that it was 10 to 15, which is why I'm
17 saying 10 to 15; but from approaching the desk to walking over
18 to the other side was 10 to 15 minutes.

19 Q. When you say "walking to the other side," what does that
20 mean?

21 A. That's where I went to actually process the paperwork and
22 submit it to the actual Clerk's Office.

23 Q. Aah, I see.

24 So if we removed that portion of the time from when you
25 left that first counter to actually go, like, file the form and

1 pay, let's talk just about the time when you were at the
2 check-in counter completing the information in the form.

3 How much time would you estimate that -- just that segment
4 of time there at the check-in counter completing that form, how
5 much time do you estimate that took?

6 A. Between the both times when I was speaking to the woman,
7 that would be about five minutes.

8 Q. Okay. Thank you.

9 And I think you said -- did it -- you engaged with a few
10 people that day between the check-in counter and then the
11 filing counter where you paid your money and got your
12 paperwork; is that right?

13 A. Correct, yes.

14 Q. And did anyone ever stop and suggest that something --
15 that they shouldn't be helping you transcribe your information
16 onto your form?

17 A. Absolutely not.

18 Q. Okay. Were you able to verify that the information that
19 you had verbally dictated to them on the form was correct?

20 A. Yes.

21 Q. How did you do that?

22 A. Once I was over at the side where the actual clerk's desk
23 was to file it, it was read back to me, and I confirmed that
24 that was correct.

25 Q. And did you feel comfortable that you had verified

GRECO - DIRECT / ELDER

1 sufficient for you to sign under penalty of perjury that the
2 information was accurate?

3 A. Absolutely.

4 Q. Okay. And after you had verified the accuracy of the
5 information transcribed onto your form, to the extent you were
6 content with it, did they assist you in putting your signature
7 onto the form?

8 A. Yes. I requested that they help me find the spot with my
9 hand, and I signed with my -- I signed, myself, on the form.

10 Q. Did you pay your filing fee?

11 A. Yes, I did. I paid it in cash.

12 Q. And were you able to file your FBNS form on that same day
13 that you arrived at the Clerk's Office?

14 A. Absolutely.

15 Q. Were you happy with the service that you received that
16 day?

17 A. Yes.

18 Q. Were there any problems?

19 A. No.

20 Q. Now, if the County had an electronic version of the FBNS
21 form on a computer with the JAWS screen reader there in the
22 CRO, would you have preferred to use that option instead of the
23 service that you received from the human clerk?

24 A. No.

25 Q. And why is that?

1 take any more of your time today.

2 No further questions. We'll pass the witness.

3 **THE COURT:** Does defendant have any questions for the
4 witness?

5 **MR. GILBERT:** Yes, please, Your Honor.

6 **THE COURT:** Please go ahead.

7 **CROSS-EXAMINATION**

8 **BY MR. GILBERT:**

9 **Q.** Good afternoon, ma'am. How are you?

10 **A.** Good. Thank you.

11 **Q.** So I want to go back just for a second.

12 When did you head into the Clerk-Recorder's Office to
13 record your FBNS form? Do you recall?

14 **A.** If you're referring to actually submitting the
15 paperwork --

16 **Q.** Yes, ma'am.

17 **A.** -- that was approximately 2:15 that afternoon.

18 **Q.** Would it -- do you recall approximately the month and
19 year?

20 **A.** That would be December 15th, 2022.

21 **Q.** Excellent memory.

22 And did you go to the County of Alameda's Clerk-Recorder's
23 Office to do this?

24 **A.** I believe that was the office I was at, yes.

25 **Q.** Now, when you went in, I think you mentioned that when you

1 first went in, you said that you wanted to complete a form for
2 an FBNS; is that right?

3 A. Correct.

4 Q. Did you have a pre-completed form when you went in?

5 A. No, I did not.

6 Q. Was there anything that you were asking the Clerk-Recorder
7 to modify or edit that you had completed before coming to the
8 office?

9 A. No, I did not.

10 Q. So when you came in, you didn't have a pre-completed form.
11 You were just asking for assistance in how to complete a new
12 form?

13 A. Correct.

14 Q. Did you find that the Clerk-Recorder's staff were helpful
15 to you?

16 A. Absolutely.

17 Q. Did you find that they were trying to accommodate you and
18 provide you with assistance?

19 A. 100 percent.

20 Q. And were they polite in their interactions?

21 A. Yes.

22 Q. And did you find that you were able to complete the
23 services that you needed based upon the Clerk-Recorder's
24 programs and services that they made available to you at that
25 time?

GRECO - REDIRECT / ELDER

1 **A.** Yes.

2 **Q.** And were you satisfied that you had received the services
3 that you needed and were able to complete your FBNS form at
4 that time without any problems?

5 **A.** Yes.

6 **MR. GILBERT:** Thank you very much.

7 **THE COURT:** Does plaintiff have further questions for
8 the witness?

9 **MR. ELDER:** One.

10 **REDIRECT EXAMINATION**

11 **BY MR. ELDER:**

12 **Q.** Just to clarify, Ms. Greco, the County clerk offered to
13 act as a transcriber for you; is that right?

14 **A.** She offered to assist me, yes.

15 **MR. ELDER:** Thank you. No further questions.

16 **THE COURT:** Any further questions from defendant?

17 **MR. GILBERT:** Just a moment, Your Honor.

18 (Pause in proceedings.)

19 **MR. GILBERT:** No, Your Honor. Thank you.

20 **THE COURT:** All right. Thank you, ma'am. You can
21 stand down from the witness stand.

22 If you can please assist her, that would be appreciated.
23 Thank you.

24 (Witness excused.)

25 **THE COURT:** I would like to take a brief -- I would

CLARK - DIRECT / ELDER

1 number one complaint I hear about sighted people is how
2 difficult it is to understand the screen readers.

3 So I think one of my complaints that I have in my -- when
4 I'm working with people is often from family members of the
5 person I'm working with that say they don't understand where or
6 what or how their relative is using the computer to help them,
7 especially on web pages, where the way that JAWS gives you
8 information about web pages is even more opaque to a sighted
9 user.

10 **Q.** And did you go to inspect the Clerk-Recorder's facility
11 and computer kiosk in around August of 2023?

12 **A.** Yes.

13 **Q.** And did you have an opportunity to sit down and look at
14 the computer kiosk with the Web wizard or the software suite on
15 it?

16 **A.** Yes.

17 **Q.** And did you have a chance to look at the keyboard that was
18 there at the computer?

19 **A.** Yes.

20 **Q.** For a blind user, could you describe what is the
21 significance of a keyboard layout?

22 **A.** So many applications -- there's so many applications that
23 do so many things that all the common combinations of
24 keystrokes are used up. So, for example, if I want to do
25 something in Word to save a document, I might do control S or I

CLARK - DIRECT / ELDER

1 what was the first step in that process?

2 **THE COURT:** Hold on, Counsel. I don't mean to
3 interrupt, but what's being shown on the screen is not
4 Exhibit 11A.

5 **MR. ELDER:** Oh. What...

6 (Pause in proceedings.)

7 **THE COURT:** There we go. Thank you. Please continue,
8 Counsel.

9 **BY MR. ELDER:**

10 **Q.** Okay. Can you see this? Does this Photo 11A look like
11 the -- what you just --

12 **A.** Yes.

13 **Q.** -- described?

14 Thank you. And when you first arrived that day, what was
15 the first step in the process of beginning to fill in an FBNS
16 form?

17 **A.** So we walked into this area and walked to the back. In
18 the center of the picture is an open door. This was normally
19 an entered -- an entrance into the building; but at that
20 doorway, they had put a desk across the entranceway. And we
21 walked up to that desk and checked in and said why we were
22 there.

23 You can see a person standing there checking in at the
24 moment. It's a little dark in that picture, but that's the
25 person that was right before us when we went there.

CLARK - DIRECT / ELDER

1 There's a row of chairs also along the side. It looks
2 like this is designed to handle a large number of people in the
3 waiting area; but the day we were there, there was only a few
4 people in front of us.

5 Q. Okay. And when you say "we," who was with you?

6 A. You were.

7 Q. Okay. And did I go to the counter and ask to complete an
8 FBNS -- an FBNS form using the computer kiosk for my business?

9 A. Yes.

10 Q. And then what happened next?

11 A. We were asked to stand to the side of the door there just
12 in front of that glassy area while the staff operating the door
13 tried to figure out what was the next step. They asked us to
14 wait for a few minutes and they would tell us what we would do
15 next.

16 After about five minutes or so, they came and said they
17 had notified a supervisor that we were there and asked us to
18 proceed around the corner of the building, into the building
19 itself, for the next step in the process.

20 Q. And where did we -- where did we go next?

21 A. So we walked back across that atrium to the -- in the
22 front there, you can see these red tape lines for, you know,
23 guiding you in. So we walked back to that front of the picture
24 and then went outside onto the street, walked to the corner,
25 turned the corner, turned again into the building.

CLARK - DIRECT / ELDER

1 And then once we in the building, we were told to go to
2 the first room on the right, which turns out to be their public
3 terminals, public -- I'm not quite sure what exactly they were
4 calling that room. But then we were told to check in there in
5 that room where the supervisor would then help us with the rest
6 of the process.

7 Q. Okay. I'd like to show you what's been marked as 11D.
8 This is another photo probably in your tab there.

9 A. I'm ready.

10 Q. And does this photo -- well, sorry.
11 What is this a photo of?

12 A. This is a photo of the room that had the kiosk in it.
13 It's showing the door that we entered to come in. The kiosk is
14 immediately behind us.

15 And it's also showing a staff room where they have
16 somebody who's over-- there's a glass partition and a room
17 where somebody is overseeing that room, and it's available to
18 answer questions if people are having trouble with the
19 computers.

20 Q. And so once -- sorry.

21 Does this -- does this photo reflect an accurate depiction
22 of the facility that you inspected that day?

23 A. Yes.

24 MR. ELDER: And, Your Honor, we would move this into
25 evidence and would ask to publish it to the jury.

CLARK - DIRECT / ELDER

1 **THE COURT:** Any objection?

2 **MR. GILBERT:** To 11D, no.

3 **THE COURT:** 11D, as in "dog."

4 **MR. GILBERT:** No, Your Honor.

5 **THE COURT:** Okay. Exhibit 11D is admitted, and you
6 may publish it to the jury.

7 (Trial Exhibit 11D received in evidence.)

8 **MR. GILBERT:** Your Honor, just to confirm,
9 Exhibit A -- 11A and 11D have been admitted?

10 **THE COURT:** 11A, as in "apple," and 11D, as in "dog,"
11 have been admitted.

12 **MR. GILBERT:** Thank you.

13 **BY MR. ELDER:**

14 **Q.** Okay. Are you able to see this on the screen now,
15 Mr. Clark?

16 **A.** Yes.

17 **Q.** Is this what you just described?

18 **A.** Yes.

19 **Q.** Did -- was there a -- you said there was a process of
20 meeting the supervisor at some kind of a station; is that
21 right?

22 **A.** We met the supervisor at this window. I think what's not
23 in this picture immediately to the right of that is a doorway
24 into that room.

25 So we came into this room, we stopped at this glass

CLARK - DIRECT / ELDER

1 partition, explained who we were and why we were there, and
2 they said just a moment, the supervisor will be with us, and he
3 came out through that door and then met with us.

4 Q. Okay. And do you recall how long did we wait for the
5 supervisor?

6 A. Probably two or three minutes.

7 Q. Okay. And then once the supervisor arrived, what happened
8 next?

9 A. He went with us to the kiosk that has the financial
10 fictitious business name wizard on it and the JAWS software,
11 made sure it was on, and signed in. I think there's a sign-in
12 process to get to the particular page. And said, "Looks like
13 everything was running," and then let us know to contact him if
14 we had any questions.

15 Q. And did he have to activate the JAWS program?

16 A. I don't remember. I think so. I think they have -- when
17 the computer came on, they had to start JAWS up.

18 Q. Okay. I'd like to show you what's been marked as
19 Photo 11C. 11C, Charlie. It should be in your tab.

20 A. Yes, I see it.

21 Q. Okay. And what is this a photo of?

22 A. This is a photo of the room. In the upper center of the
23 picture are you, me, and the supervisor in front of the kiosk.
24 You can see the door that I mentioned in the other one that
25 wasn't in the picture where he came from. And then there's a

CLARK - DIRECT / ELDER

1 bunch of other workstations around the room that we never were
2 involved with.

3 **Q.** Does it seem to depict what you saw that day?

4 **A.** Yes.

5 **MR. ELDER:** Your Honor, I'd move to admit Exhibit 11C
6 and publish to the jury.

7 **THE COURT:** Any objection?

8 **MR. GILBERT:** No, Your Honor.

9 **THE COURT:** Exhibit 11C is admitted, and you may
10 publish it to the jury.

11 (Trial Exhibit 11C received in evidence.)

12 **BY MR. ELDER:**

13 **Q.** And can you see this --

14 **A.** Yes.

15 **Q.** -- photo?

16 Okay. Thank you.

17 So once the computer was signed in and the JAWS screen
18 reader was running, were there any other steps that happened
19 before the -- before you and I started using the computer?

20 **A.** No. I mean, the supervisor did say, "Here you go. Let me
21 know if you have any questions." I think he gave us a phone
22 number or way to get ahold of him, and then left us to our
23 devices.

24 **Q.** Were there -- did he plug headphones in?

25 **A.** No.

CLARK - DIRECT / ELDER

1 Q. And then did you have to help submit that form through
2 their -- through their Web wizard?

3 A. Yes. There were places in that form that I had to fill
4 out.

5 Q. Okay. And then after that had been submitted through the
6 FBNS software suite wizard, what happened next in the process?

7 A. We notified the supervisor that we had completed the
8 process and were ready for the next step. We waited a minute
9 or so for him to come back. And I don't remember -- we had to
10 wait for him to come back to give us a ticket, and the ticket
11 was our place in line for the next step.

12 And then once we were given that ticket, we left the room
13 and went to the next room to finish the process.

14 Q. And that ticket, was that checking in at the supervisor
15 station in the photo that we saw in 11D?

16 A. They -- yes. They gave us the ticket there. I don't know
17 what the normal process for getting the ticket was -- would be.

18 Q. And so were we given a ticket with a number?

19 A. Yes.

20 Q. And then what was the next step in that process?

21 A. So he guided us out of the room into the main lobby area
22 where they have looks like a dozen counters, told us what our
23 ticket number was.

24 As we entered the room, they actually called that ticket
25 number and told us to proceed to, I think, Counter 7 or 8 with

CLARK - DIRECT / ELDER

1 the forms.

2 Q. Okay. I'd like to show you what is marked as Exhibit 11B,
3 boy.

4 A. Okay.

5 Q. And what is this a photo of?

6 A. This is a photo of the room that has the counters.

7 Q. And does it reflect what you saw that day?

8 A. Yes.

9 MR. ELDER: I'd move Exhibit 11B into evidence and be
10 published to the jury.

11 THE COURT: Any objection?

12 MR. GILBERT: No, Your Honor.

13 THE COURT: Exhibit 11B is admitted, and you may
14 publish it to the jury.

15 (Trial Exhibit 11B received in evidence.)

16 BY MR. ELDER:

17 Q. And can you now see this?

18 A. Not yet. There we go. Yes.

19 Q. Okay. And so was the number called?

20 A. Yes, as we walked into the room. The supervisor had not
21 actually left at that point.

22 Q. Okay. And then at some point did we approach the counter?

23 A. Yes. The supervisor took us to that counter --

24 Q. Okay.

25 A. -- because it was called as we walked in.

CLARK - DIRECT / ELDER

1 Q. And what was the next step in the process, as you recall?

2 A. We told them who you were. They pulled the form up on
3 their computer screen, read back the form to us to make sure
4 that the information was correct. It wasn't. Your business
5 name was wrong on the form.

6 We corrected -- we told them that was wrong -- or you told
7 them it was wrong, and then they corrected that, printed the
8 form, and asked for your payment.

9 Q. Okay. And then -- I'm sorry. Did you say -- did they
10 print out the corrected form?

11 A. I don't know. They did something on the computer.
12 I think she wandered back to a printer, and there was some --
13 some movement behind the counter that I'm not aware of that I
14 couldn't see, but I think she picked up a form from the
15 printer. Yes, she had to print the form out because she
16 brought it back for you to sign.

17 Q. Okay. And after the information had been verified, the
18 form had been printed, did I sign it?

19 A. Yes.

20 Q. And in your assessment, were you given information about
21 the experiences of Lucy Greco in receiving transcriber services
22 at the Clerk-Recorder's Office?

23 A. I was after this visit.

24 Q. Okay. But before you wrote your final report?

25 A. But before I wrote my report.

1 you walked in the door?

2 A. No.

3 Q. So you went there for the purpose of creating a new form?

4 A. I went there to examine the form that was there.

5 Q. And just to be clear, at no time did you or Mr. Elder ever
6 demand anyone at the CRO edit a previously signed or completed
7 form, did you?

8 A. No.

9 Q. Thank you.

10 Now, when you were shown to the kiosk, that was a kiosk
11 that was set aside especially available to the disabled
12 individuals; is that right?

13 A. Yes.

14 Q. And, in fact, when you were shown there, the supervisor
15 offered to provide assistance to you in utilizing it, didn't
16 he?

17 A. He did, but that was -- the purpose was for us to figure
18 out if a blind person could independently complete the form.

19 Q. But you were offered assistance and you rejected that
20 assistance?

21 A. Yes.

22 Q. And you understood that the County's typical operations on
23 a day-to-day basis is that they will offer to provide
24 assistance in using that kiosk for anyone who needs it?

25 A. I was not aware of that at the time we made the visit. I

1 was later given the policy form for how to deal with that
2 particular kiosk, but was not aware of that at the day -- on
3 the day of the visit.

4 Q. And when you went through and were testing the system out,
5 you and Mr. Elder were typing in random phrases and things in
6 various forms just to test it out, weren't you?

7 A. We were typing in relevant information to his business. I
8 wouldn't say we were just randomly making up addresses. We
9 were using his actual information.

10 Q. But that might have been part of the reason why the
11 address was incorrect was because of the testing and the work
12 that you were doing?

13 A. Very likely, yes.

14 Q. Now, ultimately, Mr. Elder was able to complete an FBNS
15 form using that machine, wasn't he?

16 A. Not without my help.

17 Q. Well, did he ultimately complete an FBNS form that was
18 recorded in the Clerk-Recorder's Office?

19 A. He did, yes.

20 Q. And it was properly completed and it was recorded on that
21 day, wasn't it?

22 A. Yes.

23 Q. And after he completed at the kiosk and went to the
24 counter, at that point the information was independently
25 verified to him before he signed it, didn't he?

1 **A.** Yes.

2 **Q.** And once that information was verified, he was asked to
3 sign it under penalty of perjury, wasn't he?

4 **A.** Yes.

5 **Q.** And at no point did any clerk-recorder ever edit a
6 completed and signed form that you observed, did you?

7 **A.** Yes, I agree.

8 **Q.** Now, I want to focus on your expertise. It sounds like
9 you've got quite a bit of experience in helping employees to
10 maximize their potential in the workplace. Is that a fair
11 statement of your job?

12 **A.** Yes.

13 **Q.** Now, that's independent and separate from the ADA, isn't
14 it?

15 **A.** I am hired because people have made reasonable
16 accommodations often at their job sites because of requirements
17 of the ADA.

18 **Q.** Well, let's be very specific. You do not evaluate whether
19 something is compliant with the ADA, do you?

20 **A.** I do not.

21 **Q.** And, in fact, you don't even know if any of the standards
22 that you utilize are even endorsed or even within the ADA?

23 **A.** What I know -- the ADA I don't think addresses Web
24 accessibility. There are other standards that say, "Hey,
25 look" -- the ADA says, "Look, we need to make things accessible

1 standard if what you're trying to do is accomplish a goal of
2 making it work.

3 Q. Let me see if I can go through this. Let me see if I
4 understand it.

5 You went to the County's facilities and inspected their
6 hardware and software; is that right?

7 A. Yes.

8 Q. And they had a nice newer desktop model machine that was
9 available and designated for disabled access?

10 A. Yes.

11 Q. And that was a very expensive nice machine that's
12 dedicated for public use; is that right?

13 A. Yes.

14 Q. And it had also been equipped with very qualified and
15 competent software to be able to access material and fill and
16 complete forms on that machine, hadn't it?

17 A. Yes.

18 Q. And, in fact, it was equipped with JAWS. And I think I
19 heard you say earlier JAWS was one of the more expensive and
20 more wildly utilized screen reading programs.

21 A. Yes.

22 Q. And the County went out and purchased all this, put it
23 together, and had it available, functioning properly when you
24 went to inspect it, didn't it?

25 A. No.

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, March 29, 2024

Ana Dub

Ana Dub, RDR, RMR, CRR, CCRR, CRG, CCG
CSR No. 7445, Official United States Reporter

EXHIBIT C

Volume 4

Pages 558 - 709

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Thomas S. Hixson, Magistrate Judge

LISAMARIA MARTINEZ,)	
)	
Plaintiff,)	
)	
VS.)	NO. 3:20-CV-06570 TSH
)	
COUNTY OF ALAMEDA, MELISSA)	
WILK, in her individual)	
capacity, EVA HE, in her)	
individual capacity, MARIA)	
LAURA BRIONES, in her)	
individual capacity,)	
)	
Defendants.)	
)	

San Francisco, California
Friday, March 29, 2024

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

For Plaintiff:

TRE LEGAL PRACTICE
1155 Market Street, Tenth Floor
San Francisco, California 94103
BY: TIMOTHY R. ELDER, ATTORNEY AT LAW

UNDAUNTED LAW FIRM, P.C.
600 California Street, Seventh Floor
San Francisco, California 94108
BY: S. TOMIYO STONER, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Kelly Shainline, RPR, CRR, CSR No. 13476
Official United States Reporter

APPEARANCES: (CONTINUED)

For Plaintiff:

UNDAUNTED LAW FIRM, P.C.
600 California Street, Seventh Floor
San Francisco, California 94108

BY: S. TOMIYO STONER, ATTORNEY AT LAW

For Defendant:

ORBACH HUFF & HENDERSON LLP
6200 Stoneridge Mall Road, Suite 225
Pleasanton, California 94588

**BY: KEVIN E. GILBERT, ATTORNEY AT LAW
NICHOLAS D. FINE, ATTORNEY AT LAW**

Also Present:

**Lisamaria Martinez
Michelle Korosy, Paralegal
Matthew Yankee, County of Alameda**

1 **THE COURT:** Overruled.

2 **THE WITNESS:** Since I had corrections that needed to
3 be made on the form, I didn't quite understand how extensive it
4 could be. If I were told that it would be easier to transcribe
5 it and that way I could receive assistance, absolutely. It was
6 just a one-page document.

7 **BY MR. ELDER:**

8 **Q.** Would you have felt comfortable having the clerk that you
9 spoke with transcribe your information for you onto a blank,
10 unsigned form?

11 **A.** Yes. She's a trusted source.

12 **Q.** Okay. When you said "trusted source," what do you mean by
13 that?

14 **A.** Meaning she is a staff person of a government entity
15 and -- or any staff person who does assist me I believe is a
16 trusted source because, you know, they are doing their job and
17 they're helping a blind person with assistance. They're
18 usually trained on helping people with disabilities. So,
19 again, most people want to help.

20 I would not randomly ask someone off the street to help me
21 fill out a form or just a random person in the lobby of the CRO
22 because I don't know who they are.

23 **Q.** If a clerk had acted as a transcriber to fill out your
24 information on the form, how would you have verified that what
25 the clerk wrote down was accurate?

1 **A.** Great question. I, throughout the entire process, repeat
2 what information is needed and on areas that tend to or might
3 be confusing. For instance, I used to live on Herringbone
4 Court and people always want to know how to spell
5 "Herringbone." So I would spell it out after saying it, and I
6 would spell it multiple ways -- or multiple times, sorry -- and
7 then ask them to spell back what they wrote.

8 Numbers often get repeated as being written for the, you
9 know, same concept. You know, I might say 123 Main Street but
10 someone might repeat back that they wrote 213, and I'll go,
11 "Wait a minute. Can you read that again?" And they go, "Oh,
12 no, I'm sorry. I didn't -- I said '213,' but I wrote '123.'"
13 And then I'll say, "You know, are you sure?"

14 Then when the form is completed before signing or if I
15 have to, you know, write in initials and resign because a
16 document had changes, then I would ask the transcriber to
17 please from top to bottom read through all the information, and
18 I would have them stop at the tricky points and reconfirm that
19 things were entered correctly. And that is how I verify
20 information that is transcribed onto documents.

21 **Q.** If the clerk-recorder that helped you on that first
22 encounter, if you had been able to verify that what they had
23 written down was correct, would you have felt comfortable
24 signing that document under penalty of perjury?

25 **A.** A blank form that was filled out?

1 Q. Yes.

2 A. Yes, I would absolutely feel comfortable signing my name
3 to that document.

4 Q. And -- okay. Thank you.

5 So my understanding is that that did not happen on this
6 first encounter on March 29, 2019?

7 A. I was not offered a blank form as an option. I was
8 repeatedly told by several individuals that they could not help
9 me make fixes or corrections to my form.

10 Q. Okay. Did you have to wait awhile while you were -- well,
11 how much time did you have to wait while you were waiting to
12 speak with the supervisor to escalate this issue?

13 A. When I asked for a supervisor, I was told that she was out
14 to lunch. And so -- and that Ms. Moran, the clerk behind the
15 counter, she didn't know when Ms. Briones would return.

16 So I went close to where I had previously been waiting for
17 my number to be called, which was up against a planter, and I
18 waited for quite a long time. Like I said, I came in close to
19 the beginning of 1:00 o'clock, and throughout -- it was over an
20 hour that I waited. And I would start to walk toward the
21 counter to get an update from Ms. Moran in between customers,
22 and she would see me coming and say things like, "Oh, she's not
23 here yet" or "I just checked and she's not here yet."

24 So at some point after an hour I did walk up to the
25 counter and stay there and said -- I asked Ms. Moran more

1 Q. Did Laura Briones, the supervisor, ever offer to assist
2 you with filling out a blank, unsigned FBNS form there in the
3 office on that day March 29th, 2019?

4 A. No.

5 Q. If Ms. Briones, who is the supervisor, had pulled out a
6 blank FBNS form and asked you if she could help you to
7 transcribe information on that blank FBNS form that was
8 unsigned, would you have accepted that offer?

9 A. 100 percent, yes.

10 Q. Would you have felt comfortable letting Ms. Briones act as
11 a transcriber for your information?

12 A. Yes, I would consider her a trusted source.

13 Q. Do you feel you would have been able to verify the
14 information?

15 A. Yes.

16 Q. And if you had satisfactorily verified the information to
17 the extent you were content with it, would you have been
18 willing to sign a blank form there in the office under penalty
19 of perjury?

20 A. Yes.

21 Q. So after this second conversation, I believe -- well,
22 there was discussion of a Go Back Letter.

23 What happened after this recorded conversation with
24 Ms. Briones?

25 A. She offered multiple times to do a Go Back Letter for me

1 time?

2 **A.** After that point, five years later I'm having a difficult
3 time remembering when it was I spoke to the gentleman. I don't
4 recall if it was before or after Ms. Briones' conversation,
5 but --

6 **Q.** Are you -- are you confident that that gentleman was the
7 one -- was the only person you -- the only customer you spoke
8 to that day?

9 **A.** Yes.

10 **Q.** Okay. So while you were waiting for your Go Back Letter,
11 what were you feeling?

12 **A.** I was feeling frustrated and overwhelmed and tired,
13 exhausted emotionally. I really didn't think I was going to
14 spend that much time at the CRO.

15 **Q.** Had you, since you didn't get anywhere with -- well, since
16 you -- Ms. Briones didn't -- wasn't assisting you with
17 correcting the form, did you try to escalate it to a third
18 level up the management chain?

19 **A.** I did.

20 **Q.** And do you remember who that third-level manager was?

21 **A.** Eva Hill -- or He. Sorry. Eva He.

22 **Q.** And had you requested to speak to Eva He?

23 **A.** Yes.

24 **Q.** Did Eva He ever come out and speak to you?

25 **A.** No. I was told that she was not there.

1 Q. And did you hear his comment about the CRO being sort of
2 an intermediary, it was like he might have said library, and
3 that they don't have responsibility for the information that's
4 just passed along and published to the community? I'm trying
5 to summarize without being able to say it verbatim. Do you
6 recall anything like that in his testimony?

7 A. Yes. I heard him say --

8 MR. GILBERT: Misstates facts.

9 THE COURT: Overruled.

10 THE WITNESS: I heard him say "library," that, yes,
11 the CRO acts like a library.

12 BY MR. ELDER:

13 Q. Does that give you any confidence that the County's taking
14 responsibility and will provide transcriber service for you on
15 your FBNS form if you return in a few weeks from now?

16 MR. GILBERT: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: I'm hesitating because my library has
19 helped me fill out applications but the County hasn't. So I
20 don't -- I don't have any confidence at all.

21 BY MR. ELDER:

22 Q. And you said that you had to pay Ms. Grim to drive you
23 back to the Clerk's Office on May 31st. How much did you pay
24 her.

25 A. I paid her for four hours of service at \$25 an hour, so

1 \$100.

2 **Q.** And did you have to spend some extra time to come back to
3 the CRO beyond that first trip where you weren't able to get
4 same day service on that day?

5 **A.** Could you repeat the question, please?

6 **Q.** Yeah, sorry. It's a little bit weird.

7 In -- so you weren't able to file your form on March 29th,
8 2019; right?

9 **A.** Correct.

10 **Q.** You had to come back a second time, fill out a new form,
11 second trip. Did that take up some of your time?

12 **A.** It did.

13 **Q.** And in terms of trying to understand any kind of dollar
14 value for what your time might be worth, how much -- if I came
15 to you and said, "I'd like some sessions of life coaching," how
16 much would you charge me for life coaching per hour?

17 **MR. GILBERT:** Objection. Rule 26. Rule 37. 403.

18 **THE COURT:** Overruled.

19 **THE WITNESS:** So I offer coaching -- life coaching for
20 individuals on a -- like a package of sessions, and so one
21 session one hour is \$175.

22 **BY MR. ELDER:**

23 **Q.** And do you have other pricing schemes or different -- I
24 mean, is it always that price or are there variations?

25 **A.** Yeah, I do have different pricing. I often do group

1 coaching to make it a lot more affordable. So that is offered
2 at a lower cost. And if someone who clearly wants coaching
3 talks to me and we decide it's a good fit but they can't afford
4 individual coaching, I will offer it at a sliding scale.

5 Q. Now, is there any uncompensated time that goes into
6 preparation or work needed for a one-hour of paid session?

7 A. Tons.

8 Q. Okay. And can you estimate how much unpaid or
9 uncompensated time you spend preparing for one of these paid
10 one-hour sessions?

11 A. Yeah. So, you know, there's a lot of client acquisition,
12 engagement, audience building, e-mails, administrative stuff.
13 I would say that for every one hour of -- one hour of coaching,
14 I probably put in four hours of uncompensated time.

15 Q. So can you estimate on an hourly basis about how much you
16 receive on your time for that 175? If you're doing one-hour --

17 A. Right.

18 Q. -- of paid time and four hours of paid unpaid prep time,
19 what would you estimate your sort of take away is on an hourly
20 basis for that work?

21 A. Right.

22 MR. GILBERT: Objection. Relevance. Rule 37.

23 THE COURT: Overruled.

24 THE WITNESS: So in order to essentially pay me for my
25 uncompensated time, that for one -- that's five hours of

1 one-hour being face to face for being all the client
2 acquisition and administrative stuff, so that would be five
3 hours divided by 175. I believe that's \$35 an hour.

4 **BY MR. ELDER:**

5 **Q.** And is \$35 an hour an estimate of -- is that your estimate
6 of the value of what your time might be worth?

7 **A.** Yeah. I would say so, yes.

8 **Q.** Okay. Sitting here today on the five-year anniversary of
9 what happened to you, how are you feeling about the way
10 the County has treated you?

11 **MR. GILBERT:** Asked and answered.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** Today I'm tired. I'm drained. The last
14 five years have been really emotionally tough for me, and there
15 have been points in my business when handling business-related
16 documents that I get a lot of anxiety. And that little voice
17 in your head that tells you, you know -- whispers in your head
18 and makes you doubt yourself has cropped up quite a lot.

19 And I just -- I just feel like it's been a really long
20 journey for something that I know could have been a really
21 simple equal-access issue if I was just given the transcribing
22 assistance that I had asked for, and I don't want other blind
23 people to have to deal with that. We're in the 21st century
24 and, you know, this should not be happening.

25 **Q.** And do you consider yourself a resilient person?

1 **A.** I do.

2 **Q.** Okay. We're on the five-year anniversary of the incident
3 on March 29th today. Do you have an understanding of whether
4 or not you're going to have to go back do the CRO before
5 March 31st, 2024?

6 **A.** Before March 31st?

7 **Q.** Yes. Sorry. Before May 31st, 2024.

8 **A.** I was going to say I'm a bit in trouble.

9 Yes, I do have to go back in order to file and pay by
10 credit card my FBN, at least that's my understanding. I have
11 not gone on the web lately to check if anything has changed.

12 **Q.** If you go in person sometime before May 2024 to renew your
13 FBNS form, would you be willing to have a County employee act
14 as a transcriber to fill out a blank FBNS form or renewal
15 document?

16 **MR. GILBERT:** Cumulative. Asked and answered.

17 **THE COURT:** Overruled.

18 **THE WITNESS:** Yes.

19 **BY MR. ELDER:**

20 **Q.** Have you heard about the proposed -- or sorry.

21 Have you heard about the computer kiosk system that
22 the County has constructed?

23 **A.** Yes.

24 **Q.** Have you tried to use it?

25 **A.** No.

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, March 29, 2024

A handwritten signature in black ink, reading "Kelly Shainline", is written over a horizontal line.

Kelly Shainline, CSR No. 13476, RPR, CRR
U.S. Court Reporter